

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

RICARDO ZAPATA, *Applicant*

vs.

**LITTLE SAIGON NEWS;
NORGUARD INSURANCE COMPANY, administered by BERKSHIRE HATHAWAY,
*Defendants***

**Adjudication Number: ADJ9341618
Santa Ana District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the Order Approving Compromise and Release (Order) issued by the workers' compensation administrative law judge (WCJ) on November 17, 2020.¹ By the Order, the WCJ approved the settlement agreement between the parties to resolve applicant's claim for \$21,000.00 less permanent disability advances and attorney's fees.

Applicant contends that the parties did not agree to deduct permanent disability advances from the settlement amount and it was improper to provide for this deduction in the Order. He also contends that defendant improperly took a credit for permanent disability advances it paid.

We did not receive an answer from defendant. The WCJ issued a Report and Recommendation of Workers' Compensation Judge on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of applicant's Petition for Reconsideration and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will dismiss applicant's Petition and return this matter to the trial level for further proceedings consistent with this opinion.

FACTUAL BACKGROUND

Applicant claims injury to his upper extremities, lower extremities, neck, back, chest, ribs,

¹ The Order is dated November 13, 2020, but defendant was designated to serve the Order on November 17, 2020.

burns, internal system and psyche on December 19, 2013 while employed as a pressman by Little Saigon News. On October 13, 2020, defendant submitted for approval a Compromise and Release agreement reached between the parties to settle the claim for \$21,000.00 less \$3,150.00 for attorney's fees. On October 22, 2020, the WCJ issued an Order Suspending Action on Compromise and Release requesting that medical reporting referenced in the agreement be submitted. Defendant submitted the requested reports on October 28, 2020 and the WCJ subsequently issued the Order Approving the settlement agreement. The Order states that the settlement is payable as "one lump-sum to applicant, less permanent disability advances previously made, if any, less reasonable attorney fees in the amount of \$3,150.00, to be held in trust pending agreement by current and prior applicant's counsels."

DISCUSSION

"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.)²

Additionally, decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corp. (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) As required by 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." (*Id.* at p. 475; Lab. Code, § 5313.)

Further, all parties to a workers' compensation proceeding retain the 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 is ". . . one of 'the rudiments of fair play' assured to every litigant . . ." (*Id.* at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at p. 577.) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and

² All further statutory references are to the Labor Code unless otherwise stated.

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 pp. 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.4th 703, 710 [57 Cal.Comp.Cases 230].)

Section 5702 states that:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

(Lab. Code, § 5702.)

Stipulations are binding on the parties. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) The parties may stipulate to the facts in controversy and agree to resolve a claim by compromise and release. "The legal principles governing compromise and release agreements are the same as those governing other contracts." (*Burbank Studios v. Workers' Comp. Appeals Bd. (Yount)* (1982) 134 Cal.App.3d 929, 935 [47 Cal.Comp.Cases 832].) "An approved workers' compensation compromise and release rests upon a higher plane than a private contractual release; it is a judgment, with the same force and effect as an award made after a full hearing." (*Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1169 [50 Cal.Comp.Cases 311] (writ den.), internal citations and quotations omitted.)

Applicant contends that the Order Approving improperly provided a deduction for permanent disability advances, which purportedly conflicts with the parties' settlement agreement. Applicant also contends that defendant improperly took a credit for permanent disability advances it had paid. However, there has been no evidence or testimony under oath admitted into the record regarding applicant's allegations, i.e., there is no evidence upon which we could base a decision and the matter is premature for reconsideration.

Since there is currently no evidence in the record regarding applicant's allegations, we will return this matter to the trial level for further proceedings. Upon return of this matter to the trial level, we recommend that the WCJ treat applicant's Petition as a petition to enforce the agreement between the parties including setting a hearing so applicant can provide evidence in support of his

arguments and create a record 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.

Accordingly, we will dismiss applicant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Order Approving Compromise and Release issued by the WCJ on November 17, 2020 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 23, 2021

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

**HANNA BROPHY
LAW OFFICE OF JAMES DRAKE
RICARDO ZAPATA**

AI/pc

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