

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

MIRELA CHRISTEN, *Applicant*

vs.

**STATE COMPENSATION INSURANCE FUND,
ADMINISTERED BY AIMS, *Defendants***

**Adjudication Numbers: ADJ2648786 (VNO0291983);
ADJ1382819 (VNO0291977)
Van Nuys District Office**

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

Applicant seeks reconsideration of the November 16, 2023 Joint Findings of Fact and Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) found that the Appeals Board lacks jurisdiction to adjudicate the issue of alleged misappropriation of funds by applicant's former guardian ad litem following the issuance of an Order Approving Compromise and Release on June 24, 1999. The WCJ further determined that applicant is barred by the rule of collateral estoppel from raising the issue of misappropriation of funds by the guardian ad litem because the factual issue was tried and adjudicated adversely to applicant in Superior Court.

Applicant contends that the guardian ad litem misappropriated the proceeds from her workers' compensation settlement.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will affirm the F&O, except that we will amend the Findings of Fact to reflect that the date of appointment of the guardian ad litem was June 24, 1999, that applicant's claim of misappropriation of funds by the

guardian ad litem is not barred by collateral estoppel, and that the Workers' Compensation Appeals Board is without authority to order disgorgement of funds the guardian ad litem received pursuant to a finalized Compromise and Release agreement.

FACTS

Applicant claimed injury to her psyche and spine while employed as an office assistant by defendant State Compensation Insurance Fund (SCIF) on May 15, 1994 (ADJ2648786) and from March, 1994 to April, 1995 (ADJ1382819).

On June 4, 1999, the parties submitted a Joint Compromise and Release for approval by the Workers' Compensation Appeals Board (WCAB). Applicant signed the Compromise and Release on June 8, 1999.

Also on June 8, 1999, applicant's spouse Robert Master filed a petition to be appointed as guardian ad litem.

On June 24, 1999, a WCJ issued an order approving the settlement.

Also on June 24, 1999, the WCJ issued an order appointing applicant's spouse, Robert Master, as applicant's guardian ad litem.

On June 25, 2020, applicant filed a Petition to Reopen, averring the guardian ad litem misappropriated the proceeds of the settlement.

On March 22, 2022, applicant filed a Declaration of Readiness to Proceed, requesting a status conference regarding her allegations of workers' compensation fraud, and that she was sent to the hospital under duress.

On September 8, 2022, the parties proceeded to trial, framing issues in relevant part of whether the Appeals Board retained jurisdiction over the dispute, and applicant's contentions regarding the misappropriation of funds. (Minutes of Hearing and Summary of Evidence (Minutes), dated September 8, 2022, at p. 2:10). The testimony of applicant and guardian ad litem Robert Master was adduced over multiple trial days, with the matter submitted for decision on October 19, 2023. (Minutes of Hearing (Further) and Notice of Intent to Submit, dated October 2, 2023, at p. 2:16.)

On November 16, 2023, the WCJ issued his decision, finding in relevant part that the Appeals Board "lacks jurisdiction to adjudicate an issue of alleged misappropriation of funds that were sent to the guardian ad litem by way of the Order Approving Compromise and Release dated

6/24/1999.” (F&A, Finding of Fact No. 6.) The WCJ also found that “[a]pplicant is barred by the rule of collateral estoppel from raising the issue of misappropriation of funds by the guardian ad litem in that the factual issue was tried and adjudicated against the Applicant in Superior Court.” (*Id.*, Finding of Fact No. 7.) The WCJ’s Opinion on Decision explains that applicant’s spouse was appointed as her guardian ad litem. However, in subsequent marital dissolution proceedings, the issue of alleged misappropriation of the proceeds of applicant’s workers’ compensation claim was adjudicated adversely to applicant. (Opinion on Decision, p. 2.) Because of the similarity in issues raised and determined, applicant could not relitigate the issue in a different forum pursuant to the doctrine of collateral estoppel. (*Ibid.*)

Applicant’s Petition for Reconsideration (Petition) indicates her disagreement with the WCJ’s findings, averring applicant was the only annuitant designated to receive the proceeds of her award. (Petition for Reconsideration, dated November 21, 2023, at p. 1.)

The WCJ’s Report observes that defendant SCIF satisfied the terms of the Compromise and Release agreement reached in 1999. (Report, at p. 4.) The Report further explains that there is no statutory authority conferred on the Workers’ Compensation Appeals Board “over a guardian ad litem’s alleged breach of fiduciary duties after a compromise and release was approved and paid.” (*Id.* at p. 5.) Accordingly, the WCJ recommends we deny applicant’s Petition.

DISCUSSION

We begin our discussion with the issue of collateral estoppel. Applicant avers her former spouse and guardian ad litem misappropriated the proceeds from the Compromise and Release agreement settling her workers’ compensation claim in 1999. The WCJ has determined that applicant is precluded from raising the issue of alleged misappropriation of the proceeds of her workers’ compensation settlement under the doctrine of collateral estoppel.

Collateral estoppel falls under the rubric of *res judicata*, which refers to both claim preclusion and issue preclusion. “Claim preclusion, the ‘primary aspect’ of *res judicata*, acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties. Issue preclusion, the ‘secondary aspect’ historically called collateral estoppel, describes the bar on relitigating issues that were argued and decided in the first suit.” (*Hudson v. Foster* (2021) 68 Cal.App.5th 640, fn. 10 [283 Cal.Rptr.3d 822].)

The requirements for collateral estoppel were discussed by the California Supreme Court in *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 943 [38 Cal.Rptr.3d 220] (*Pacific Lumber*) as follows:

“Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.” (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 [272 Cal. Rptr. 767, 795 P.2d 1223].) The doctrine applies “only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.] The party asserting collateral estoppel bears the burden of establishing these requirements.” (*Id.* at p. 341.)

Here, applicant’s spouse Robert Master was appointed guardian ad litem on June 24, 1999. However, in marital dissolution proceedings initiated in 2000, applicant alleged the misappropriation of her workers’ compensation settlement. A November 29, 2001 Notice of Intended Decision, issued by the superior court judge presiding over the dissolution proceedings stated:

On the issue of claimed misappropriation of petitioner’s workers compensation settlement, the court finds that no such misappropriation occurred. The testimony was that petitioner received a substantial settlement of a stress disability claim that she had filed against her employer. Some of the funds were deposited in petitioner’s separate account, some were used to pay for a private duty nurse for petitioner, some were used to pay against the mountain of community credit card debt which the parties had accumulated, and some were used for other household/community expenses. At one point, respondent had himself appointed as petitioner’s Guardian Ad Litem by the Worker’s Compensation Appeals Board. Respondent’s testimony is that the expenditures were all done by agreement of the parties. It was not until after the present dissolution proceedings commenced that petitioner made her claims of misappropriation both in this court and before the WCAB. The court finds that respondent’s testimony on this issue is more credible, and that use of these funds was by mutual agreement and for the benefit of the community.

(Ex. C, Declaration of Robert Master, dated December 10, 2019, Ex. E [Addendum to Notice of Intended Decision], at p. 17.)

Applicant’s current claim before the Appeals Board also asserts misappropriation of the proceeds of her workers’ compensation settlement. However, we observe that the findings quoted

above were contained within the superior court judge’s Addendum to Notice of Intended Decision. The evidentiary record before us does not reflect the final decision of the judge, or a subsequent entry of judgment. Accordingly, we cannot conclude that the issue of misappropriation of funds was *necessarily decided* in the former proceedings, or that the determination was *final and on the merits*. (*Pacific Lumber, supra*, at p. 943.) Because the requirements necessary to assert issue preclusion/collateral estoppel have not been met, we will amend the WCJ’s Findings of Fact to reflect that applicant’s claim of misappropriation of her worker’s compensation settlement proceeds is not precluded under the doctrine of collateral estoppel.

The WCJ’s Opinion on Decision also determined that the Appeals Board was without jurisdiction over the issue of alleged misappropriation of funds by the guardian ad litem. (Finding of Fact No. 6.)

Pursuant to Labor Code section 5300,¹ the WCAB has exclusive jurisdiction to adjudicate the “recovery of compensation, or concerning any right or liability arising out of or incidental thereto” of injuries that “arise out of and in the course” of employment,” and that “[c]ompensation includes medical treatment, temporary disability indemnity, permanent disability indemnity, SJDB vouchers, and death benefits ... In other words, the WCAB maintains exclusive jurisdiction pursuant to the California Constitution and section 5300 to adjudicate workers’ compensation disputes.” (*Dennis v. State of California* (2020) 85 Cal.Comp.Cases 28 [2020 Cal. Wrk. Comp. LEXIS 1] (Appeals Board en banc).) The Appeals Board has continuing jurisdiction over all its orders, decisions, and awards made and entered. (Lab. Code, § 5803.) The Appeals Board may rescind, alter, or amend any order, decision, or award, for good cause. (Lab. Code, § 5803.)

However, section 5804 provides that “No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury.” “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, quoting *Johnson v. Workmen’s Comp. App. Bd.* (1970) 2 Cal.3d 964, 973.) Consequently, after the five year period has expired, the Order Approving Compromise and Release constitutes a final judgement with the full effect of res judicata. (*Smith v. Workers’ Comp. Appeals Bd., supra*, 168 Cal.App.3d at p. 1169.) Therefore, after five years, an award may only be set aside on the showing of fraud or mistake. (*Id.*)

¹ All further statutory references are to the Labor Code unless otherwise stated.

In contrast to the limitations imposed by the statute on the Appeals Board to *set aside* an entire award, the Appeals Board continues to have jurisdiction after five years to *enforce* its awards. (*Barnes v. Workers' Comp. Appeals Bd.* (2000) 23 Cal.4th 679, 687 [65 Cal.Comp.Cases 780].) That is, the WCAB's jurisdiction to *enforce* an award extends beyond section 5804's five-year limitations period because an order ascertaining and fixing the exact amount of liability does not rescind, alter or amend any prior award in violation of section 5804. (*Id.*) Consequently, collateral changes may be made to an award so long as the merits of the basic decision determining the worker's right to benefits are not altered, and the amount of benefits remains unchanged. (*Hodge v. Workers' Comp. Appeals Bd.* (1981) 123 Cal.App.3d 501, 509 (*Hodge*); see *Garcia v. Industrial Acci. Com.* (1958) 162 Cal.App.2d 761, 767.)

Here, there is no dispute that applicant's injury occurred more than five years ago as she was injured in 1994 and 1995. The order approving the Compromise & Release issued in 1999, and the amount of compensation that applicant received was fixed. There is no dispute that defendant paid the amount of compensation awarded and paid applicant's guardian ad litem pursuant to the order appointing. Applicant does not seek to enforce the award against defendant, and based on the record before us, we do not see that defendant has any further liability.

Instead, applicant seeks an order against the guardian ad litem to return the monies that he received. As explained above, while we continue to have jurisdiction over our orders, here, the guardian ad litem was not a party to the Compromise & Release. Hence, the only other order at issue is the order appointing the guardian ad litem, and it did not refer to the payment of the Compromise & Release.

Insofar as the requested *remedy* for a breach of fiduciary duty or misappropriation of funds by the guardian ad litem would involve disgorgement of those funds, we discern no statutory grant of authority for the relief requested. Neither does our review of the relevant case law disclose a basis in equity that would permit the Appeals Board to undertake such action. (*Weiner v. Ralphs Co.* (2009) 74 Cal.Comp.Cases 736, 753 [2009 Cal. Wrk. Comp. LEXIS 143] ["[t]he WCAB is a judicial body of limited jurisdiction, with no powers beyond those conferred on it by the Constitution and the Labor Code".]) Accordingly, we will amend Finding of Fact No. 6 to reflect that the Appeals Board does not have authority to order that the guardian ad litem disgorge any funds he received pursuant to the Compromise and Release agreement.

Finally, we note clerical error in the Findings of Fact, in that the guardian ad litem was appointed on June 24, 1999, rather than June 8, 1999. We will amend Finding of Fact No. 2, accordingly.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the November 16, 2023 Joint Findings of Fact and Orders is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 16, 2023 Joint Findings of Fact and Orders is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

...

2. Mr. Robert Master was appointed guardian ad litem for the applicant on June 24, 1999.

...

6. The Appeals Board lacks the authority to order the guardian ad litem to disgorge funds he received by way of the Order Approving Compromise and Release dated June 24, 1999.

7. The doctrine of collateral estoppel is not applicable herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 22, 2024

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

**MIRELA CHRISTEN
LAW FIRM OF FRIEDMAN & BARTOUMIAN
GOLDMAN, MAGDALIN & KRIKES**

SAR/abs

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