

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

JERRY ARMENTA, *Applicant*

vs.

**ROBIN BARTHOLOMEW and EMPLOYERS COMPENSATION
INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ10419715
Stockton 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.

Defendant, Employers Compensation Insurance Company, petitioned for reconsideration of the Findings of Fact, Award and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on November 12, 2020. In that decision, the WCJ found that applicant sustained injury to her right great toe, right ankle and right knee arising out of and in the course of his employment on May 10, 2016, as a handyman by defendant, Robin Bartholomew, then insured for workers' compensation liability defendant, Employers Compensation Insurance Company. The WCJ also found that apportionment of liability for permanent disability is not justified by the opinion of the agreed medical examiner, Peter Mandell, M.D. The WCJ deferred the issue of permanent disability.

Defendant contends in its Petition for Reconsideration that the opinion of Dr. Mandell is not substantial evidence on the issue of the extent of applicant's disability, but is substantial evidence on the issue of apportionment of liability for permanent disability.

Applicant filed an answer contending that the Petition for Reconsideration should be denied.

The WCJ issued a report in which she recommended that defendant's Petition for Reconsideration be denied.

Subsequently, at our request the parties participated in a commissioners' settlement conference and agreed to resolve this matter by Compromise and Release.

The Compromise and Release was filed on August 6, 2021. The Compromise and Release provides for a settlement of \$104,406, less credit for permanent disability indemnity paid of \$7,725.71, less \$47,630 to payable to applicant to fund a self-administered Medicare set-aside trust, and less an attorneys' fee of \$15,660, leaving \$33,390.29 payable to applicant as a lump sum.

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."

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. We also conclude that the characterization of benefits specified in Addendum D is justified by the record.

Therefore, we will rescind the Findings of Fact, Award and Order issued on November 12, 2020, 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 of Fact, Award and Order issued on November 12, 2020, be **RESCINDED**.

IT IS FURTHER ORDERED that the Compromise and Release filed August 6, 2021, be **APPROVED**.

AWARD IS MADE in favor of **JERRY ARMENTA** against **EMPLOYERS COMPENSATION INSURANCE COMPANY** as specified in the Compromise and Release.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 12, 2021

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

**JERRY ARMENTA
LAW OFFICES OF T. MAE YOSHIDA
MULLEN & FILIPPI**

DH/ara

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