

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

WALID EL RAWAS, *Applicant*

vs.

**RUAN TRANSPORTATION MANAGEMENT SYSTEMS; ACE AMERICAN
INSURANCE COMPANY administered by HELMSMAN MANAGEMENT SERVICES,
*Defendants***

**Adjudication Number: ADJ8693761
Riverside District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, rescind the June 14, 2021 Findings and Order, and substitute it with a new Findings and Order that strikes Findings of Fact "b," which found that the Workers' Compensation Appeals Board (WCAB) lacks jurisdiction to consider the applicant's Petition to Set aside and strikes the phrase "In the event jurisdiction were found" from Findings of Fact "c." We will otherwise restate the WCJ's decision.

The WCAB Rules provide in relevant part: (1) that "[e]very petition for reconsideration ... shall fairly state all the material evidence relative to the point or points at issue [and] [e]ach contention contained in a petition for reconsideration ... shall be separately stated and clearly set forth" (Cal. Code Regs., tit. 8, former § 10842, now § 10945 (eff. Jan. 1, 2020) and (2) that "a petition for reconsideration ... may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved" (Cal. Code Regs., tit. 8, former § 10846, now § 10972 (eff. Jan. 1, 2020).)

In accordance with section 5902 and WCAB Rules 10945 and 10972, the Appeals Board may dismiss or deny a petition for reconsideration if it is skeletal (e.g., *Cal. Indemnity Ins. Co. v. Workers' Comp. Appeals Bd. (Tardiff)* (2004) 69 Cal.Comp.Cases 104 (writ den.); *Hall v.*

Workers' Comp. Appeals Bd. (1984) 49 Cal.Comp.Cases 253 (writ den.); *Green v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 564 (writ den.); if it fails to fairly state all of the material evidence, including that not favorable to it (e.g., *Addecco Employment Services v. Workers' Comp. Appeals Bd. (Rios)* (2005) 70 Cal.Comp.Cases 1331 (writ den.); *City of Torrance v. Workers' Comp. Appeals Bd. (Moore)* (2002) 67 Cal.Comp.Cases 948 (writ den.); or if it fails to specifically discuss the particular portion(s) of the record that support the petitioner's contentions (e.g., *Moore, supra*, 67 Cal.Comp.Cases at p. 948; *Shelton v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 70 (writ den.)) The petition filed by applicant herein fails to state grounds upon which reconsideration is sought or to cite with specificity to the record. Therefore it is subject to dismissal or denial. While we are granting reconsideration solely for the purpose of amending the WCJ's decision as stated above, we will not disturb the WCJ's decision in any other regard.

If applicant's petition had not been subject to denial or dismissal for being skeletal, we would have denied it on the merits for the reasons stated by the WCJ in the report, which we would have adopted and incorporated as quoted below:

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I

INTRODUCTION

Applicant, in propria persona, has filed a timely and verified Petition for Reconsideration challenging the Findings and Orders of 6/14/2021, for which the defendant has provided their proof of service dated 6/17/2021.

Petitioner seeks reconsideration on the following grounds:

1. The evidence does not justify the findings of fact;
2. The findings of fact do not support the Order, Decision, or Award, and;
3. Petitioner has discovery new evidence material to him which he could not with reasonable diligence have discovered and produced at the hearing.

II

CONTENTIONS

Applicant's Petition (EAMS Doc ID 74382834) appears to contend the following based on the court's interpretation of said Petition:

1. Defendant was hiding for review the “written agreement” which was part of the original settlement, to include his tax liability on the settlement proceeds.
2. The addendum (outlining the annuity) was not consistent with the agreement reached by the parties.
3. There are monies which he feels are owing to him which are not contained in the settlement.

As of this date, a response has not been received from the defendant.

III

FACTS

Walid El Rawas, age 45 at the time of injury, while employed on 5/28/2012, as a truck driver, occupational group number “350”, at Adelanto, California, sustained injury to his right shoulder, and claims to have sustained injury to his neck. At the time of the injury the employer’s workers’ compensation carrier was ACE American Insurance Company as administered by Helmsman Management Services. The case in chief initially resolved by way of Stipulated Award, with Award issued 3/14/2014 providing for 23% permanent disability, and a provision for future medical treatment. Subsequently, applicant filed his Petition for New and Further Disability on 5/27/2015. The case in chief then resolved by way of Compromise and Release (EAMS Document #65684121), with the Order Approving Compromise and Release issued 12/14/2017 (EAMS Document #65684098). Said settlement provided for a gross settlement of \$95,706.86, without credit for prior permanent disability advances, and included provision for a Medicare Set Aside (MSA) with a seed payment of \$47,452.83, and payment to fund a structured annuity of \$33,898.00. From the gross amount, attorney fees (at the time of settlement the applicant was pro per) were to be withheld of \$14,356.03. (The issue of the attorney fee division remains deferred based on the subsequently filed Petition to Set Aside.)

The settlement document, together with the addendum, are signed by interpreter Ahmed Mekhemar and also dated 1/24/2017, identifying him as an Arabic interpreter #301903. (In this regard, the court has taken judicial notice of the Judicial Council List for court certified, registered and enrolled interpreters, which includes a listing for this individual as an Arabic interpreter with “active” status.) (Board Exhibit “X”). In the Pre-Trial Conference Statement (PTCS) from the Mandatory Settlement Conference (MSC) set 1/15/2019, the following stipulation also appears:

“Payment made to the applicant of \$47,453.83. Payment check was cashed by applicant.”

In the Minutes of Hearing from the Status Conference set 3/13/2018, it was noted that the applicant might pursue a “(Petition) to Set Aside OACR”, also referring to the attorney fee division issue for which the matter was continued to a Status Conference of 5/1/2018. Said Petition is dated 3/13/2018 (EAMS Document #66929943) and received that same date, although not entered into EAMS until 5/1/2018. Applicant filed a supplemental Petition (with attached Exhibits) (Applicant’s Exhibit “1”). In their Answer of 3/20/2018 (EAMS Document #66664071), the defendant refers to the Answer to Petition [to] Reject Annuity agreement, and set aside Compromise and Release, which they were treating as a Petition for Reconsideration.

In his Petition of 3/13/2018, the applicant made the following allegations:

1. That he has discovered new evidence material to him which he could not with reasonable diligence (have) discovered and produced at the hearing.
2. After signing the settlement on 12/14/2017, he determined that there were more conditions put in the settlement papers as set forth in the annuity sent to him on 1/18/2018 (under the attached cover letter from the defense attorney), with conditions that did not appear in the Compromise and Release.
3. During discussion which took place on 12/14/2017, nothing was said to him related to him regarding tax liability or that the annuity payment would stop after death.
4. Nothing was said through the translation as to when the first annuity payment was to be made.
5. There was a translation error as to the conditions of the Annuity.

In his second Petition of 10/31/2018, the applicant referred to additional obtained evidence (with the attached exhibits), essentially contenting:

1. There were additional conditions placed in the annuity agreement received after the Compromise and Release which did not comply with his understanding of the terms of the settlement.
2. That the annuity agreement was subject to possible taxation, and that he had not understood that it would terminate upon his death.

Further, in his Pre-Trial Conference Statement of 1/15/2019, the applicant made the raises the following additional contentions:

1. Improper translation by interpreter of Compromise and Release at time of signing on 12/14/2017.
2. Settlement check received after 30 days.

3. Annuity addendum sent 3 months after Compromise and Release and confirmation that he had rejected the [provisions.]

The attached documentation to the Petition, which included the above transmittal from the defense attorney, includes provision for the MSA Annuity of \$1,907.25 to be paid, if the (applicant) is living, annually commencing 1/12/2019 for a maximum of 29 years. This same document referred to the initial “seed money” of \$47,452.83, and appears to correspond with the “settlement rider” attached to the Compromise and Release which was also attached to the Petition. A second filing of the Petition is dated 10/31/2018, filed 11/5/2018, and appeared to mirror these allegations.

The matter was initially heard on 3/14/2019. At that time, the applicant did not have an interpreter present (defendant had denied liability for a potential bill on the basis of the prior Compromise and Release), although he waived an interpreter for purpose of these proceedings. Stipulations and issues were framed, and the above exhibits taken into the record. As there was insufficient time to start, and the witness Information and Assistance Officer Linda Guillen, who was present in response to a defense subpoena and who was not available to testify, the matter was continued to 4/25/2019.

At the time of Trial on 4/25/2019, the applicant testified and waived his right to an interpreter.

The substance of his testimony, following examination by the court and his own direct examination, was that the settlement documents submitted on 12/14/2017 did not coincide with the annuity agreement which he received several months later (said annuity was to fund the structured portion of his Medicare Set-Aside allocation account). While he understood the annual installment of approximately \$1,900.00, he had understood that this was for a guaranteed period of 29 years. He did not recall the addendum submitted with the settlement documents which also indicated that said payments were to be “while living.” He also did not understand the potential tax liability as set forth in the addendum, although also indicated that he was not aware that as this was a workers’ compensation settlement that there was no tax liability. As to the base payment of the settlement proceeds, he indicated that this was received more than 30 days following the settlement, and that he still had the envelope in which it was received.

While under cross-examination, he seemed to acknowledge that the problem was not a faulty interpretation (the interpreter Ahmed Mekhemar was present with his attorney Glen Sandler) but rather the incompleteness of the documents submitted on 12/14/2017, which did not match with the subsequently received annuity agreement. While acknowledging his signature on the settlement documents, he also indicated that there was a “separate” set of documents with

defense counsel's handwritten notations (the court had provided each party with a copy of the settlement documents as they appear in EAMS.)

At this point in the proceedings, he indicated that he was ill and could not proceed. Based on this representation and the court's observation of the applicant, a continuance was granted over defense objection (this will appear in the Minutes of Hearing as an off calendar pending referral of this matter to calendar in July 2019 for an available date in September 2019. The court had undertaken an extensive review of its own calendar for May 2019, but the parties respectively had calendar conflicts, and the applicant was not otherwise available until September 2019 as he was out-of-state, further confirming that he had advised defense counsel of this fact at an earlier hearing.

The parties appeared for the continuation Trial of 9/5/2019. At that time the applicant represented that due to pain that he had taken certain prescribed medication, and was not able to competently represent himself or testify. The defendant also indicated that defense witness Mekhemar was not able to be present as he had other interpreting engagements on which to appear. Over defense objection the matter was continued to 10/16/2019.

Applicant's continuing cross-examination continued briefly on 10/16/2019, but was terminated after he indicated that he was in "severe pain" and had not brought his prescribed Norco/Vicodin (prescribed by Dr. Delatorre). The matter was continued to 11/27/2019 over defendant's objection.

During his brief testimony, he confirmed receipt of a portion of his settlement funds, although was unclear as to his receipt of the funds for the Medicare Set Aside. He also confirmed that this settlement included the close out of his future medical as part of this injury, to include his neck surgery. He had not undergone the surgery as he was "concerned for his life"). It was during this testimony he confirmed his continuing medical treatment with a Dr. Delatorre, who prescribed the Norco/Vicodin to be taken "as needed" for his severe neck pain, with radiation into the shoulder and into his spine.

Continuing cross-examination continued of the applicant at the time of the re-scheduled hearing of 12/9/2019. While such testimony was unfocused for the large part, the substance of this testimony was that the settlement documents had been altered between the time he reviewed with the Information and Assistance officer and the interpreter and their submission to the court, with particular to the structured settlement of the MSA and the provision for an annual installment payment limited to his life time. However, he had no further documentation on this point. Once again, the applicant indicated he was not able to proceed due to health issues; after reviewing the note signed by Dr. Cheng of Kaiser on 12/7/2019, it did not appear that this physician was actually addressing the health issues (a "virus" effecting his ear, nose and throat) and

thus he was directed to bring such documentation at the time of the next hearing re-set for 1/27/2020.

At the time of Trial on 1/27/2020, the applicant presented with a Status Report from Patrick Coffey P.A. of Kaiser Permanente dated 12/9/2019 as to his inability to testify on that date. Over defendant's objection, this was taken into evidence as Applicant's Exhibit #3. Noteworthy was that while confirming the inability to testify was indicated, the exact medical condition involved was not specified.

The Information and Assistance Officer Linda Guillen was next called to testify as defendant's witness. She confirmed her meeting with the applicant on 12/14/2017 to review the proposed Compromise and Release, which included the terms of the structured settlement and annuity pertaining to the Medicare Set Aside Allocation (MSA). She confirmed in her review the applicant that he was advised that said annuity included an annual payment for the applicant's lifetime not to exceed a total of 29 payments. She also confirmed that during this meeting the interpreter Ahmed Mekhemar was present. She testified that while the applicant stated on several occasions during this meeting that while he wanted a lump sum payment, that the terms of the proposed annuity were explained to him through the interpreter which he accepted. She also confirmed a second meeting with the applicant where his desire to appeal the Order Approving Compromise and Release was discussed.

This witness testified in a truthful and credible manner.

At the conclusion of defendant's direct examination of this witness, the applicant requested a continuance to review the Summary of Evidence prepared from Ms. Guillen's testimony, and also made a passing reference to "neck pain". Over defendant's objection and what the court considered to be full development of the record, the Trial was continued to 3/16/2020 to allow this witness' cross-examination, the possible testimony of the interpreter Mekhemar, and to complete the applicant's re-direct examination of himself.

After multiple continuances, the parties appeared for Trial on 5/10/2021. The court inquired of the applicant as to whether he was ready to proceed with the cross-examination of the witness Linda Guillen, then to proceed with his own re-direct examination, and finally to present the testimony of the interpreter Mekhemar.

He first indicated that he was not prepared to proceed. First, he alluded to letters he had received from defense counsel which appeared to indicate that he (the applicant) was not able to proceed. At the court's request, and by joint e-mail, defense counsel provided copies of his letters of 4/6/2021 and 4/26/2021 directed to the applicant (these were admitted into evidence as Board's Exhibits "Y" and "Z". After review, the court determined that said

letters were simply a confirmation that the defendant had taken steps for the applicant to proceed in a virtual format (Life Size Cloud), and failed to establish good cause not to proceed to hearing as scheduled. (The parties had actually proceed on this date by AT&T Teleconferencing by their own stipulation.

Further, the applicant indicated he had made contact with an unnamed attorney regarding potential representation, and steps that could be taken in the event that the Petition to Set Aside was granted and the defendant sought restitution, and unspecified civil remedies that would allow for a provision of additional medical treatment.

After review of the arguments by both parties, the court concluded that there was no good cause to continue this matter any further, and the applicant further indicating that he would not proceed, the case was submitted for decision. (The record will also establish that the Information and Assistance Officer was directed to advise the applicant regarding his right to seek removal of this decision.)

No removal having been sought, the court proceed to render its decision, which is now the subject of applicant's Petition for Reconsideration.

IV

DISCUSSION

The court would reiterate that multiple attempts were made to allow the applicant to present the factual basis for his contentions that the Compromise and Release should be set aside. However, after the last scheduled hearing, and noting a failure to establish good cause, the court proceeded to submit the case for decision, and in the referenced Findings and Order determined the following:

A. JURISDICTION TO CONSIDER PETITION TO SET ASIDE COMPROMISE AND RELEASE:

Labor Code Section 5803 provides:

“The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division, and the decisions and orders of the rehabilitation unit established under Section 139.5. At any time, upon notice and after an 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. This power includes the right to review, grant or regrant, diminish, increase, or terminate, within the limits prescribed by this division, any compensation awarded, upon the

grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated.” (Amended by Stats. 1982, Ch. 922, Sec. 16.)

Labor Code Section 5804 further provides:

“No award of compensation shall be rescinded, altered, or amended after five years from the date of injury.”

This has been interpreted to mean that a petition to reopen must be filed within 5 years of the date of injury. A petition to reopen “shall set forth specifically and in detail the facts relied upon to establish good cause for reopening.”

....

B. OTHER CONSIDERATIONS AS TO THE SETTING ASIDE OF THE ORDER APPROVING COMPROMISE AND RELEASE:

[T]he court considered two possible alternative considerations to include negligence of a party, mutual mistake of fact, and fraud.

Negligence of a party is usually not good cause to set aside an Order Approving Compromise and Release and as such would be deemed a unilateral mistake. *Smith v. WCAB* (1985) 50 C.C.C. 311.

On the other hand, a mutual mistake may constitute good cause. A petition to set-aside an Order Approving Compromise and Release is, in effect, a Petition to Reopen (and otherwise subject to WCAB jurisdiction). It requires a showing of good cause, to include a mutual mistake of fact.

A mutual mistake of fact may exist if there is legitimate confusion over who will pay disputed medical legal costs. (*Smith*, above). Also if there is legitimate confusion over who will pay outstanding liens. [(*Gooch v. WCAB*) (1977) 42 CCC 521 (writ denied)]. In one case, both parties thought that private health insurance would pick up the cost of the applicant’s future medical treatment. The C&R was rescinded when it was learned the health insurer would not provide coverage. [(*City of Beverly Hills v. WCAB*) (*Dowdle*) (1997) 62 CCC 1691 (writ denied)].

In another case, the WCAB ruled that a misunderstanding about whether Medicare would cover the applicant's future medical care constituted good cause to set aside the C&R. [(*Santa Maria Bonita School District v. WCAB*) (*Recinos*) (2002) 67 CCC 848 (writ denied)].

Another common situation leading to a petition to set aside a Compromise and Release is a dispute over the amount of PD advances credited against the

settlement. One party usually argues the amount in the Compromise and Release did not contemplate deduction of PD advances or that it inaccurately reflects the amount of actual PDAs. Whether a mutual mistake has been made in such situations depends on the facts of the case, but case law reflects that the WCAB is reluctant to set-aside a C&R on these grounds. [(*World Mark Resorts v. WCAB*) (*Ramsey*) (2005) 70 CCC 1616 (writ denied)].

Intrinsic fraud is enough to set aside a C&R if the petition to set aside is filed within five years from the date of injury. [(*Johnson v. WCAB*) (1970) 35 CCC 362, 369]. Intrinsic fraud is a deception that relates to the original action and includes perjury. [(*Home Insurance Company v. Zürich Insurance Company*) (2002) 96 Cal.App. 4th 17, 26].]

In one example, the WCAB set aside a Compromise and Release for fraud when a Deputy Sheriff resolved his claims. After settlement, the employer learned applicant had conceded to the fact that he had been working during the period he claimed temporary disability. The WCJ found applicant made fraudulent statements at deposition and ordered the Compromise and Release be set aside and applicant “take nothing”. The appeals court upheld the decision, but also noted that the WCJ’s order that the applicant take nothing was insufficient, and awarded restitution. [(*Plass v. WCAB*) (1997) 62 CCC 705 (writ denied).]

Based on the evidence as submitted, ..., it was concluded that the applicant had failed in his burden of proof as to a good cause basis to set aside the Order Approving Compromise and Release, to include either mutual mistake of fact or fraud, and as such his Petition was be denied.

C. DEFENDANT’S CLAIM OF RESTITUTION AS AGAINST THE APPLICANT:

In light of the above findings, the issue of restitution was deemed moot.

V

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

The Appeals Board has continuing jurisdiction to “rescind, alter, or amend any order, decision, or award,” if a petition is filed within five years of the date of injury and “good cause” to reopen is alleged and shown. (Lab. Code, §§ 5803, 5804.) An order approving compromise and release is an order that may be reopened for “good cause” under section 5803. “Good cause”

to set aside an order or stipulations depends upon the facts and circumstances of each case. “Good cause” includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workmen’s Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362]; *Santa Maria Bonita School District v. Workers’ Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.)) In this case, we agree with the WCJ that applicant did not meet his burden of proof by a preponderance of evidence to show good cause to set aside the December 14, 2017 Order Approving Compromise and Release. (Lab. Code, § 5705, (“[t]he burden of proof rests upon the party or lien claimant holding the affirmative of the issue”; Lab. Code, § 3202.5.)

Moreover, we have given the WCJ’s credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ’s credibility determinations. (*Id.*)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the June 14, 2021 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the June 14, 2021 Findings and Order is **RESCINDED** and **SUBSTITUTED** with a new Findings and Order, as provided below.

FINDINGS OF FACT

1. Walid El Rawas, age 45 at the time of injury, while employed on May 28, 2012, as a truck driver, occupational group number “350”, at Adelanto, California, sustained injury to his right shoulder, and claims to have sustained injury to his neck.
2. Applicant has failed to establish good cause to set aside the Compromise and Release.
3. Defendant’s claim for restitution is moot.

ORDERS

- a. Applicant's Petition to Set Aside the Compromise and Release is denied.
- b. Defendant's claim for restitution is denied.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 31, 2021

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

**WALID EL RAWAS
WAI & CONNOR**

PAG/oo

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