

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

CONCEPCION LOPEZ, *Applicant*

vs.

**NATURAL PRODUCTS GROUP, LLC; NORTH RIVER INSURANCE,
administered by LIBERTY MUTUAL and CRUM & FORSTER, *Defendants***

**Adjudication Numbers: ADJ6785524; ADJ7953165
Santa Ana District Office**

**OPINION AND DECISION AFTER
RECONSIDERATION**

On May 26, 2023, we issued our “Opinion and Notice of Intention to Dismiss” (Opinion), wherein we allowed lien claimant Beverly Hills Pharmacy 15 days to file proof that it had timely filed its petition for reconsideration of a F&O issued on June 21, 2022 by a workers’ compensation administrative law judge (WCJ). In our Opinion, we gave notice to Beverly Hills Pharmacy that, unless it submitted proof of timely filing within the allotted 15 days, its petition for reconsideration would be dismissed.

Fifteen days after May 26, 2023 was June 10, 2023. However, June 10, 2023 was a Saturday, so Monday, June 12, 2023 was the last business day that Beverly Hills Pharmacy could file its response to our Opinion. (Cal. Code Regs., tit. 8, § 10600.) Beverly Hills Pharmacy did not submit a timely response to our Opinion. As a result, Beverly Hills Pharmacy failed to prove that its petition for reconsideration of the WCJ’s June 21, 2022 F&O was timely filed.

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers’ Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com.* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

If the petition had been timely, we would have granted reconsideration, rescinded the F&O, and reversed the WCJ's decision. In the F&O, the WCJ found that defendants had agreed to pay, and Beverly Hills Pharmacy had agreed to accept, \$1,200 in full and final settlement of Beverly Hills Pharmacy's lien claim, which totaled \$140,671.36, via a series of text messages. (F&O, June 21, 2022, pp. 3, 10-11.) The WCJ found that the text messages constituted a valid contract, showing offer and acceptance of the \$1,200 settlement amount. As for consideration, the WCJ explained:

[D]efendants were: (1) waiving and giving up defenses which they contended in their brief would bar any recovery by lien claimant; 2) Induced to take the matter off calendar, and by doing so, risked vitiating their argument for exclusion of lien claimant's evidence. In turn, lien claimant avoided an exclusion of evidence and possible take nothing, and was able to avoid further litigation and buy their peace.

(F&O, pp. 10-11.)

In its petition for reconsideration, Beverly Hills Pharmacy argued that the F&O is not supported by substantial evidence, where there is no evidence of a written settlement agreement or a "meeting of the minds" between the parties showing that Beverly Hills Pharmacy had agreed to settle its lien claim for \$1,200.

Contract principles apply to settlements of workers' compensation disputes. (*Burbank Studios v. Workers' Comp. Appeals Bd. (Yount)* (1982) 134 Cal.App.3d 929, 935 [47 Cal.Comp.Cases 832].) For a settlement to be effective, the necessary elements of a contract must exist, which includes the mutual consent of the parties. (Civ. Code, §§ 1550, 1565, 1580; *Yount, supra.*) There can be no contract unless there is a meeting of the minds and the parties mutually agree upon the same thing. (Civ. Code, §§ 1550, 1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128; *Sieck v. Hall* (1934) 139 Cal.App.279, 291; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.) A court has no authority to fashion a settlement agreement to which the parties have not themselves agreed. (*Burgess v. California Mul. Bldg. & Loan Assoc.* (1930) 210 Cal. 180.)

Preliminary negotiations or an agreement for future negotiations are not the functional equivalent of a valid, subsisting agreement. (*Kruse v. Bank of America* (1988) 202 Cal.App.3d 38.) Under basic contract law, "terms proposed in an offer must be met exactly, precisely and unequivocally for its acceptance to result in the formation of a binding contract; and a qualified

acceptance amounts to a new proposal or counteroffer putting an end to the original offer.” (*Panagotacos v. Bank of America (Panagotacos)* (1998) 60 Cal.App.4th 851, 855-856.)

Here, contrary to the WCJ’s findings, the texts reveal that the parties were mid-negotiation, and that a great deal of confusion, rather than mutual understanding, surrounded the terms of any proposed settlement agreement. The absence of mutual understanding and consent to a settlement is further evinced by the fact that, while texting, the parties agreed to call each other on multiple occasions to discuss the proposed terms, with the clear intent of clarifying the myriad ambiguities stemming from their text exchanges. (Joint Exh. A, pp. 4-5.) Thus, it is clear that the settlement terms proposed via text were not “unequivocally” accepted or understood, such that a binding contract could result therefrom. (*Panagotacos, supra*, 60 Cal.App.4th at pp. 855-856.)

More significantly, the WCAB has exclusive jurisdiction to adjudicate all issues of compensation, including liens against compensation and a defendant’s liability. (Lab. Code, §§ 4903, 5300, 5301.) Specifically, pursuant to section 5702, an agreement settling a claim in a workers’ compensation case must be submitted to the WCJ or the Appeals Board for review and approval. (Lab. Code, § 5702.) If the stipulation is not approved by a WCJ, it is not enforceable. Moreover, pursuant to the WCAB Rules of Practice and Procedure, all parties are required to comply with the regulations regarding filing of documents and use of approved forms, and lien claimants must file all lien documents electronically in the Electronic Adjudication Management System (EAMS). (See Cal. Code Regs., tit. 8, §§ 10205.10, 10205.12, 10206.2, 10305(m), 10610, 10615, 10670, 10803.) Here, neither a written settlement agreement nor a written stipulation that the parties had settled Beverly Hills Pharmacy’s lien claim for \$1,200 was ever submitted to, or approved by, a WCJ. Thus, there was no basis for the WCJ to conclude that the lien had been resolved via the parties’ text messages.

For these reasons, had we retained jurisdiction over the matter, we would have granted Beverly Hills Pharmacy’s petition for reconsideration and rescinded and reversed the WCJ’s June 21, 2022 F&O.

Accordingly, we vacate our Opinion and Order Granting Petition for Reconsideration issued on September 29, 2022, and dismiss the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Opinion and Order Granting Petition for Reconsideration issued by the Workers' Compensation Appeals Board on September 29, 2022 is **VACATED**.

IT IS FURTHER ORDERED that the Petition for Reconsideration of the Findings and Order issued by the WCJ on June 21, 2022 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 19, 2023

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

**BEVERLY HILLS PHARMACY
COLLECTIVE RESOURCES
GARBER, AV & DUNCAN
LOWER & KESNER**

AH/cs

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