

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

EMAD REZKALLA, *Applicant*

vs.

**CATHEDRAL CITY AIR CONDITIONING AND HEATING INC;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ10448534
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and the Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, both of which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

The provision of any benefit, that was not due, shall not in the absence of an agreement, be an admission of liability nor operate as a waiver of any right or claim. (Lab. Code, § 4909).

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ NATALIE PALUGYAL, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 25, 2023

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

**EMAD REZKALLA
MASHNEY LAW OFFICES
STATE COMPENSATION INSURANCE FUND, LEGAL**

PAG/mc

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

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE ON
PETITION FOR RECONSIDERATION**

I.

INTRODUCTION

Applicant filed an Application for Adjudication of Claim alleging injury to the back, arm, legs, and knee, while working on 7/19/2014. Applicant settled the claim by way of Stipulation with Request for Award on 9/5/2017. On 9/6/2022, Applicant filed a Petition to Set Aside the Stipulations with Request for Award with a Declaration of Readiness. The matter proceeded to trial on the Petition to Set Aside.

Applicant filed a timely and verified Petition for Reconsideration under *Labor Code §5903* following the court's Findings and Order dated 2/10/2023 finding there was no good cause or mutual mistake to set aside the Stipulations with Request for Award. Applicant contends because defendant admitted compensability by paying for treatment to the eye, there was a mutual mistake and the Stipulation with Request for Award should be set aside. At the time of this report, Defendant had not filed an answer to the Petition for Reconsideration.

II.

STATEMENT OF FACTS

Applicant filed an Application for Adjudication of Claim alleging injury to the back, arm, legs, and knee, while working on 7/19/2014. Applicant settled the claim by way of Stipulation with Request for Award on 9/5/2017. The Stipulations stated Applicant had sustained injury arising out of and in the course of employment to "the left knee, left elbow, and lower back." **Defendant's Exhibit A.** The settlement was based upon the AME report of Dr. Soheil Aval dated 10/20/2016.

On 9/6/2022, Applicant filed a Petition to Set Aside the Stipulations with Request for Award alleging there was a mutual mistake when parties entered into the Stipulations with Request for Award because the eye had not been included. Applicant filed his Petition to Set Aside 5 years from the date the Award was issued and over 8 years after the date of injury.

At trial, parties submitted on documentary evidence. The undersigned judge found there was no mutual mistake and denied the Petition to Set Aside the Stipulations with Request for Award. It is from this Finding and Order that Applicant Petitions for Reconsideration under *Labor Code §5903*.

III.

DISCUSSION

As to Applicant's assertion that defendant admitted compensability of right eye on 1/20/2022, the court offers the following:

Applicant referenced a letter from defendant to Dr. Lawrence Miller regarding a UR denial to the left shoulder dated 1/20/2022. **Applicant's Exhibit 3.** The letter states the left shoulder is denied. The letter does state the right eye has been accepted, however, the letter is four and half years after the Award was issued and almost 8 years after the date of injury. The letter is not evidence of a mutual mistake from 5 years ago. The right eye was not a pled body part on the Application for Adjudication of Claim, an Amended Application was never filed, and the right eye was not listed on the Stipulation with Request for Award nor was medical evidence provided to show that the right eye was industrially related. *Labor Code* §5804 limits the court's authority to amend an award five years from the date of injury and good cause was not shown to set aside the Award.

As to Applicant's assertion that defendant provided treatment to the right eye, therefore there was a mutual mistake and the petition must be set aside, the court offers the following: The provision of medical treatment by a defendant is not an admission of liability. *Garcia v. White Apron, Inc.*, 2012 Cal. Wrk. Comp. P.D. LEXIS 575. Again, the right eye was never pled by the Applicant until almost 8 years after the date of injury. Applicant failed to provide good cause to set aside the Stipulations with Request for Award dated 9/5/2017 and the court lacks jurisdiction to reopen an Award when a Petition to Reopen was not timely filed.

IV.

RECOMMENDATION

It is the undersigned's recommendation that Applicant's Petition for Reconsideration be denied and the WCAB uphold and affirm the Findings and Order of the undersigned judge dated 2/10/2023.

DATE: March 20, 2023

Katharine Holmes
WORKERS' COMPENSATION JUDGE

SERVICE:

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ON: 3/20/2023 BY: I. Arteaga

OPINION ON DECISION

Setting Aside Stipulation with Request for Award

An Award based on a Stipulation with Request for Award was issued by the undersigned judge on 9/5/2017. The Stipulations with Request for Award listed the following as body parts injured on 7/19/2014: “313 Arm, 420 Back, 513 Knee.” In the box at the bottom of page 5 of the Stipulations, the Stipulations stated: “The left knee, left elbow, and lower back. The parties have reviewed the circumstances surrounding this claim including the medical reports and records, and agree that the settlement contemplated herein is fair and reasonable.” In paragraph 9 of the Stipulations, it is stated “Additionally, the Applicant must make reasonable demand, in advance, and obtain authorization from Defendants for future medical care related to the left knee, left elbow, and low back only, unless there is an emergency situation.” **Defendant’s Exhibit A.** Applicant now alleges the Stipulations with Request for Award should be set aside based on mutual mistake because the left shoulder and right eye were not included. Defendant asserts there was no mistake and if there was a mistake, it was not mutual.

The Application for Adjudication of Claim filed by Applicant’s counsel alleged Applicant sustained injury to his back (420), arm (310), legs (510), and knee (513). **Application for Adjudication of Claim, EAMS Doc ID 60458390.** The Stipulations with Request for Award listed left knee, left elbow, and lower back in three separate sections. More specifically, the bottom of page 5 of the Stipulations states “...by the employer(s) and their insurer(s) listed above and who sustain injury(ies) arising out of and in the course of employment to the left knee, left elbow, and lower back.” The left shoulder and right eye were not listed.

Applicant did not provide any medical evidence regarding the left shoulder. Medical records were produced regarding the right eye. The Applicant was evaluated on 11/20/2015 at John F. Kennedy Memorial Hospital. Dr. Schultz noted Applicant had extreme loss of vision in the right eye that had developed during the past years. The Applicant reported his work injury of 7/17/2014 to Dr. Schultz, however, Dr. Schultz noted he was originally seen on 12/19/2014 and the lens was clear. When the Applicant returned 9 months later, the vision in the right eye had significantly reduced. Retinal detachment was not confirmed, but Dr. Schultz opined it was a cataract and Applicant underwent cataract surgery on or around 11/23/2015. **Applicant’s Exhibit 2.** No

medical evidence was provided that Applicant's right eye complaints were work related. Furthermore, Applicant had the eye surgery in 2015, a year before signing the Stipulation with Request for Award. Applicant had 5 years from the date of injury to file a Petition for New and Further, and this was not done. Based upon the lack of evidence, the court finds there was no mutual mistake and denies the request to set aside the Stipulation with Request for Award.

DATE: February 10, 2023

Katharine Holmes
WORKERS' COMPENSATION JUDGE

SERVICE AS SHOWN ON OFFICIAL ADDRESS RECORD:

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BY: MCR