

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

LUCIO ROJAS, *Applicant*

vs.

**801 SOUTH LOS ANGELES STREET LLC;
EMPLOYERS ASSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ15075519
Los Angeles District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant acting in pro per¹ seeks reconsideration of the Order Approving Compromise and Release (OACR) signed by the workers' compensation administrative law judge (WCJ) on March 14, 2023 and issued on March 16, 2023.²

Applicant contends that the OACR should be vacated or set aside.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we dismiss the Petition for Reconsideration (Petition) because it is untimely and unverified. Further, the WCJ stated that if the Petition is not dismissed it should be denied.

We have considered the allegations of the applicant's Petition and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated below, we will dismiss applicant's Petition as premature. Upon return, the WCJ should consider the Petition as one to set aside the OACR.

BACKGROUND

Applicant claimed cumulative injury to various body parts from January 1, 2019 to June 4, 2021, while employed by defendant as a handyman.

¹ On July 19, 2023, applicant filed a dismissal of attorney.

² Defendant filed a Proof of Service indicating that the OACR was served by defendant on March 16, 2022.

On February 23, 2023, defendant responded by disputing/denying the claim.

On March 13, 2023, the parties submitted a C&R signed by applicant, applicant's attorney, defendant's attorney, two witnesses, and a certified Spanish interpreter. (Compromise & Release, March 13, 2023, p. 8.) In paragraph one (1), the date of injury is listed as January 1, 2019 to June 4, 2021. With respect to paragraph six (6), the parties listed applicant's earnings as "in dispute" with no further information.

In paragraph nine (9), the parties state in pertinent part as follows:

DEFENDANT DISPUTES LIABILITY FOR THIS CLAIM IN ITS ENTIRETY BASED ON LC 3600(A)(10), LACK OF SUBSTANTIAL MEDICAL EVIDENCE OF INJURY AOE/COE, AND DOES NOT WAIVE DEFENSES BY THIS SETTLEMENT. DEFENDANT CONTENDS IT WOULD OBTAIN A TAKE NOTHING IF THE MATTER PROCEEDED TO TRIAL. . . . APPLICANT WAS DECLARED MMI BY PTP DR. GUMBS ON 3/10/22. REPORT RATES AT BETWEEN 12 - 15% PD. DEFENDANT CONTENDS THE REPORT IS NOT SUBSTANTIAL MEDICAL EVIDENCE. . . .

In addition, Addendum "A" is part of the C&R and states:

I, Lucio Rojas [*sic*], with Dominquez Firm, LLP, Applicant's attorney on [left blank] explained to applicant, Lucio Rojas, that he has the right to a final medical report from a PTP, QME, or AME which would explain the nature and extent of applicant's disability and need for future treatment.

I also explained that we do not have a final report and therefore the nature and extent of disability and treatment is unknown.

Applicant understands, and chooses to settle his case without a final medical report. (Compromise & Release, March 13, 2023, p. 10.)

Addendum A is signed by applicant, applicant's attorney (although signature is illegible), and a certified interpreter and dated March 8, 2023. The parties submitted a report dated March 10, 2022 from applicant's treating physician, Vincent L. Gumbs, M.D. (See Cal. Code Regs., tit. 8, § 10700.) According to the report, since 2003, applicant worked eight to fifteen hours per day, five to seven days a week, and his cumulative injury was due to his 18 years of employment. Dr. Gumbs recommends future medical treatment and that applicant be given access to psychological treatment.

On March 15, 2023, without holding a hearing, the WCJ issued an OACR, which states that:

IT IS ORDERED that said Compromise and Release is approved. Award is made in favor of Applicant and against Employers Assurance Company payable as follows:

Total Settlement amount.....	\$ 25,000.00
Less permanent disability advances through _____ in the amount of \$ _____	
Less _____	\$ _____
Less _____	\$ _____
Less reasonable attorney fees in the amount of	\$ 3,750.00
payable to Dominquez Firm Los Angeles and [] to be held in trust by	
[]Defendant or [] _____ pending agreement between counsel or further order of the court.	
Balance to be paid to applicant	\$21,250.00

On July 19, 2023, applicant filed his Petition and contends:

At the time of settlement I was not properly informed by my former council [*sic*] that future medical would be closed out. Being that I only speak Spanish I was not able to read the settlement and did not understand properly what I was signing. I relied on the advise [*sic*] of my former attorney who did not properly explain the settlement to me. I am now in desperate need of medical care for my work injuries. I understand that my petition is not submitted in a timely matter however I was recently made aware of this Petition for Reconsideration and I ask the appeals board for leniency.

The same day applicant filed a dismissal of attorney.

On July 25, 2023, defendant filed an Answer to the Petition contending the Petition is untimely, there is no new material evidence which could not have been discovered with reasonable diligence prior to issuance of the OACR, and there is no good cause to rescind or set aside the OACR.

DISCUSSION

“The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the 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.” (Lab. Code, § 5803.³)

We observe that contract principles apply to settlements of workers’ compensation disputes. The legal principles governing compromise and release agreements are the same as those governing other contracts. (*Burbank Studios v. Workers’ Co. Appeals Bd.* (1982) 134 Cal.App.3d 929, 935.) There can be no contract unless there is a meeting of the minds and the parties mutually agree. (Civ. Code,

³ All further statutory references are to the Labor Code unless otherwise stated.

§§ 1550, 1565; *Sackett v. Starr* (1949) 95 Cal.App.2d 128; *Sieck v. Hall* (1934) 139 Cal.App.279, 291.) Moreover, there is no contract unless the parties agree upon the same thing in the same sense. (Civ. Code, § 1580; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, including an offer of settlement of a disputed claim by one of the parties and an acceptance by the other. (*Burbank Studios, supra*, at p. 935.) A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful. (Civ. Code, § 1636; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) The plain language of a contract is the first step in determining the intent of the parties. (Civ. Code, §§ 1638, 1639.)

A stipulation is 'An agreement between opposing counsel ... ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) Stipulations are binding on the parties. (*Id.*, at p. 1121.) However, if there is a showing of good cause, the parties may be permitted to withdraw from their stipulations. (*Id.*) Whether "good cause" exists to set aside a settlement 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. (Recinos)* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Workers' Comp. Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691, 1692 (writ den.); *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311].) To determine whether there is good cause to rescind the awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Labor Code § 5702; *Weatherall, supra*, at pp. 1118-1121; *Robinson v. Workers' Comp. Appeals Bd. (Robinson)* (1987) 194 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers' Comp. Appeals Bd. (Huston)* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].)

"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 a hearing to take evidence when necessary to determine whether the agreement should be approved or disproved, or issue findings and awards." (Cal. Code Regs., tit. 8, §10700(b).)

Additionally, there must be a complete record in order to review the case. “[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision (*Hamilton v. Lockheed Corporation* (2001) 66 Cal. Comp. Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947 (Appeals Bd. en banc).] The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit 8, §10803.)

Furthermore, all parties in workers’ compensation proceedings retain their fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] (*Rucker*).) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, supra, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].)

Here, applicant contends that the C&R should be set aside. He alleges that he speaks only Spanish and could not read the C&R, which was in English and that his attorney did not tell him that his future medical treatment would be “closed out” after he signed the C&R. Since applicant contends that he did not understand what he was signing, an evidentiary record is necessary to evaluate whether there was mutual agreement as to all of the terms of the agreement. Here, the WCJ did not hold a hearing on the C&R and did not have the opportunity to assess whether the parties understood the meaning of the terms in the C&R. Therefore, the parties must have an opportunity to be heard and the WCJ must create a complete record.

Accordingly, we dismiss applicant’s Petition as premature, and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend that the WCJ treat applicant’s Petition as a Petition to set aside and set a hearing so applicant can provide evidence in support of his arguments and create a record upon which a decision can be made by the WCJ.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPPURO, COMMISSIONER

I CONCUR,

/s/ NATALIE PALUGYAL, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 18, 2023

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

**DOMINGUEZ FIRM
LUCIO ROJAS
TOBIN LUCKS**

DM/oo

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