

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

LEENETT LUMPKIN, *Applicant*

vs.

**COUNTY OF MONTEREY, permissibly self-insured,
administered by INTERCARE HOLDINGS INSURANCE SERVICES, INC., *Defendants***

**Adjudication Number: ADJ8615830
Salinas District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION AND
PETITION FOR DISQUALIFICATION**

Applicant has filed a Petition for Reconsideration which includes allegations of bias on the part of the workers' compensation administrative law judge (WCJ). Accordingly, we will treat the petition as one seeking reconsideration and disqualification. We have considered the allegations of the petition, the contents of the Report and 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, which are both adopted and incorporated herein, and for the reasons stated below, we will deny the Petition for Reconsideration and Disqualification.

Labor Code section 5311 provides that a party may seek to disqualify a WCJ upon any one or more of the grounds specified in Code of Civil Procedure section 641. (Lab. Code, § 5311; see also Code Civ. Proc., § 641.) Among the grounds for disqualification under section 641 are that the WCJ has "formed or expressed an unqualified opinion or belief as to the merits of the action" (Code Civ. Proc., § 641(f)) or that the WCJ has demonstrated "[t]he existence of a state of mind ... evincing enmity against or bias toward either party" (Code Civ. Proc., § 641(g)).

Under WCAB Rule 10960, proceedings to disqualify a WCJ "shall be initiated by the filing of a petition for disqualification supported by an affidavit or declaration under penalty of perjury stating in detail *facts* establishing one or more of the grounds for disqualification" (Cal. Code

Regs., tit. 8, § 10960, italics added.) It has long been recognized that “[t]he allegations in a statement charging bias and prejudice of a judge must set forth specifically the *facts* on which the charge is predicated,” that “[a] *statement containing nothing but conclusions and setting forth no facts* constituting a ground for disqualification may be ignored,” and that “[w]here no *facts* are set forth in the statement *there is no issue of fact to be determined.*” (*Mackie v. Dyer* (1957) 154 Cal.App.2d 395, 399, italics added.)

Under no circumstances may a party’s unilateral and subjective perception of bias afford a basis for disqualification. (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1034; *Robbins v. Sharp Healthcare* (2006) 71 Cal.Comp.Cases 1291, 1310-1311 (Significant Panel Decision).)

Here, the petition for disqualification does not set forth facts, declared under penalty of perjury, that are sufficient to establish disqualification pursuant to Labor Code section 5311, WCAB Rule 10960, and Code of Civil Procedure section 641(f) and/or (g). Accordingly, the petition will be denied.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 5, 2024

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

**LEENETT LUMPKIN
REDULA & REDULA
MULLEN & FILIPPI**

PAG/cs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Applicant, now unrepresented, has filed a timely, verified Petition for Reconsideration contending that this WCJ erred in determining that Applicant is not entitled to additional sums of money based on an asserted verbal agreement at the time of the signing of a Compromise and Release Settlement Agreement. Applicant has asserted the potential for bias in the decision.

II

FACTS

The Applicant, Leenett Lumpkin, while employed as a cook, at Salinas, California, by the County of Monterey, sustained injury arising out of and in the course of employment to her lumbar spine and to her psyche on May 23, 2010. On February 19, 2020, the Applicant, her then attorney, Jason Redula, her friend, Josh Stewart, and representatives and attorney for the Defendant, County of Monterey, met for an informal settlement conference at the offices of Applicant's Attorney, Redula & Redula. During the meeting, the parties executed a Compromise and Release Agreement settling the May 23, 2010 claim of injury for a total sum of \$429,000.00. During the course of the meeting on February 19, 2020, there were discussions between the Applicant and her attorney, Jason Redula about money the Applicant believed she was owed as reimbursement for mileage and self-procured medical expenses, which resulted in the Applicant believing she was to be paid additional sums of money by the attorneys, Redula & Redula. One of the discussions was reduced to a written agreement and signed by the parties on February 19, 2020. Later that day, February 19, 2020, an Order Approving the Compromise and Release Agreement was issued by Workers' Compensation Judge, Roisilin Riley.

Subsequent to the order approving the settlement agreement, Defendant issued payment consistent with the terms in the Compromise and Release Agreement. Applicant received an additional \$1,000.00 based on a reduction of the attorney's fees included in the Compromise and Release Agreement, but did not receive any additional sums from Redula & Redula, which she believed were owed. Applicant attempted to pursue an action in small claims court to collect the unpaid sums she believes were owed, but the action was dismissed, citing the exclusive jurisdiction of the Workers' Compensation Appeals Board. The parties proceeded to trial on the issue of

Applicant's entitlement to additional payment from her prior attorneys, Redula and Redula, on August 2, 2023 and September 12, 2023. On November 21, 2023, a Findings and Order issued which included the finding that "As the additional discussions between the Applicant and Applicant's Attorney, Jason Redula, involved various other amounts not addressed in the settlement agreement or the separate written agreement, Exhibit 7, and were not reduced to a written agreement between the Applicant and the Applicant's Attorney, it is found that these negotiations were not memorialized in writing and cannot be construed as part of the final agreement between the two." It is from this Finding that petitioner seeks reconsideration.

III

DISCUSSION

In the Petition for Reconsideration, the Applicant indicates, "I Leenett Lumpkin feels as though the proceeding judge made a bias decision in the case Leenett Lumpkin vs Jason Redula." She indicates that she provided a written statement from the witness who heard the discussion between her and Mr. Redula regarding payment of an additional sum, and she brought this witness to court for him to swear an oath and testify truthfully regarding the discussions and agreement between Jason Redula and Ms. Lumpkin.

This WCJ was very sympathetic to Ms. Lumpkin's position. She explained her position well at trial and asked well thought out questions of the witness she brought with her, Josh Stewart, to elicit corroborating testimony. There was no doubt, after hearing the testimony of both Ms. Lumpkin and Mr. Stewart, that the meeting and settlement execution on February 19, 2020 was rushed, disorganized and left Ms. Lumpkin feeling she had not been fully informed about the terms of the settlement agreement or the concerns she had about additional reimbursement that was pending. Her belief and that of Mr. Stewart, that she had discussed an additional agreement with Jason Redula to resolve these issues was genuine and believed.

Ms. Lumpkin's statement in the Petition, that the testimony of Jason Redula included responses that contradicted that of Ms. Lumpkin and Mr. Stewart is accurate. According to Mr. Redula, the parties agreed to a reduction in the attorneys' fees by \$1,000.00 in order to resolve the issue of the unpaid request for reimbursement still pending from the carrier, and this was reflected in a separate written agreement and the settlement agreement signed by the parties with a modification to the pre-printed attorneys' fees, reducing it by \$1,000.00. Corroborating documents were reviewed as evidence, the executed settlement agreement, with notations on page 6, and

addendums D and G (EAMS ID #72269314), Exhibit 8 with Ms. Lumpkin's notation regarding the change in fee amount(EAMS ID #76329820) and Exhibit 7, the signed agreement between Ms. Lumpkin and Mr. Redula as to the reduction in attorneys' fee by \$1,000.00 (EAMS ID #76329829).

The decision rendered in this case was not biased and Ms. Lumpkin did not provide details of any specific facts or conduct that would point to bias in the decision. The Findings and Order issued was based solely on the application of the law to the facts. California Civil Code §1625 provides that "The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument." The parties signed a written agreement specific to the reduction of the attorneys' fees by \$1,000.00 consistent with the testimony by Mr. Redula. Ms. Lumpkin's trial testimony included that she knew she should have gotten something in writing regarding the other agreements, but she did not. California Civil Code §1625 limits the ability to consider any negotiations or side agreements which are not included in the executed written agreement, that may have preceded or accompanied the agreement. The executed written agreement is intended to be the final version agreed upon by all parties. As the written agreement between Mr. Redula and Ms. Lumpkin related to and is consistent with the terms of the fully executed settlement agreement it may be reviewed in conjunction with the settlement agreement, pursuant to California Code of Civil Procedure §1622, as it does not contradict the terms of the executed settlement, and merely establishes the basis for the modification of the amount of attorney's fees referenced in the settlement agreement.

Neither of the parties wished to rescind the settlement agreement. As there is a written settlement agreement, which is acknowledged by the parties as a binding contract, it must, pursuant to California Civil Code §1625 supersede all negotiations & stipulations which preceded or accompanied the agreement, which were not included in the terms of the written agreement. Mr. Lumpkin's and Mr. Stewart's understanding that attorney, Jason Redula had agreed to further reduce his fee or provide payment to Ms. Lumpkin, to offset for additional expenses Ms. Lumpkin had incurred as part of her workers' compensation claim which had not been reimbursed by the carrier, was not included in the finalized settlement agreement, nor was it similarly stated in a separate written agreement, as was the agreement to reduce the attorney's fee by \$1,000.00. The oral side agreement between Ms. Lumpkin and Mr. Redula, disputed by Mr. Redula, is superseded

by the written agreement, and cannot be considered once the Compromise and Release Agreement and the separate written agreement between Ms. Lumpkin and Mr. Redula had been fully executed. Therefore, entitlement to the additional sums, not mentioned in the settlement agreement or the companion written agreement between the Applicant and Applicant's Counsel could not be considered.

Ms. Lumpkin references settlement negotiations at the time of trial in her Petition for Reconsideration, as an indication that Mr. Redula owed her additional money, but California Evidence Code §1152 renders statements, offers and conduct in settlement negotiations inadmissible. The evidence presented substantiated that both Ms. Lumpkin and Mr. Stewart believed that discussions regarding additional sums occurred with Mr. Redula and that there were discussions regarding payments or reduction to the attorneys' fees. However, the sums discussed differ in the evidence presented by Ms. Lumpkin and none of the additional terms discussed by the parties was included in the written agreements signed by the parties, or by Applicant and her attorney. Based on these facts and the application of the relevant statutes, it was determined that the Compromise and Release Agreement executed in writing by the parties and the separate written agreement executed by the Applicant and Applicant's Attorney, are the final written reflection of the ultimate agreement between the Applicant and the Insurance Carrier and the Applicant and Applicant's Attorney, and that no further sums of money are owed based on the terms of either agreement.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied for the reasons stated above.

Respectfully submitted,

Lori Alison Holmes

Workers' Compensation Judge

Date: 12/21/2023

OPINION ON DECISION

At the time of trial, Applicant, Ms. Lumpkin was concerned about several issues, including receipt of the proper settlement sums from Defendants, and the validity of the Compromise and Release agreement executed on February 19, 2020. Based on discussions between the Applicant and Defendant, and documentation provided, these issues were resolved at the time of trial, and Applicant concurred that she had received the proper amounts from Defendant, indicated in the Compromise and Release agreement and that she was not requesting rescission of the agreement. Therefore, the remaining issue was the validity of the allocation of attorney's fees and the actions of the Applicant's attorney.

Admission of Exhibits

Applicant requested admission of additional exhibits 3, 6, 10, 11, 12, 14, 15 and 16. Applicant's Attorney objected to these exhibits as irrelevant and without foundation. Applicant responded that they are relevant to show the actions of Jason Redula and to show the Applicant's attempts to resolve the issues. As the documents are of some relevance and Ms. Lumpkin laid some foundation during her testimony, these exhibits were admitted into evidence.

Validity of Allocated Attorneys Fees and Actions of Attorney

The remaining issue involves the assertion by the Applicant of an agreement between the Applicant and her attorney, made at the time of the execution of a settlement agreement finalizing her workers' compensation action. Applicant and her attorney agree that they made an agreement which was memorialized in the executed settlement agreement on February 19, 2020, which reduced the attorneys' fees that would be deducted from the settlement agreement by \$1,000.00. A separate document, explaining the basis for the reduction was also executed by both the Applicant and the Applicant's Attorney, Jason Redula. The dispute involves an additional sum that Ms. Lumpkin believes was addressed in an oral agreement between her and her attorney at the time of the execution of the settlement agreement.

When the parties to a legal action undertake to settle the legal action with a written agreement, there are often lengthy negotiations of possible terms that precede the final written agreement signed by the parties. During the process of the negotiation, terms may be added, eliminated or altered as the parties negotiate to try to reach an agreed upon resolution. Once the parties complete the process and create the final written agreement which is signed by all the parties involved, it is

intended that the fully executed agreement is the complete and final expression of the agreement. California Civil Code §1625 States:

“The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.”

This law limits the ability to consider any negotiations or agreements which are not included in the executed settlement agreement, that may have preceded or accompanied the agreement.

The Applicant presented credible evidence corroborated by witness, Josh Stewart, that Ms. Lumpkin and Mr. Redula had discussions regarding additional sums she believed were owed to her, and discussing a reduction in fees that would be taken by attorney, Jason Redula. The parties addressed a reimbursement issue with an agreed reduction in the Applicant’s Attorney’s fees in a separate written agreement, which is admissible, pursuant to California Code of Civil Procedure §1622, as it does not contradict the terms of the executed settlement, and merely establishes the basis for the modification of the amount of attorney’s fees noticeable in the executed settlement agreement. The terms in the separate written agreement signed by Jason Redula and Leenett Lumpkin is consistent with what is included in the executed final Compromise and Release agreement signed by Applicant, Leenett Lumpkin, Applicant’s Attorney, Jason Redula, and Defense Counsel, Kathleen Chassion.

There is no dispute that on February 19, 2020, Ms. Lumpkin had serious concerns about signing a settlement agreement to finalize her workers’ compensation claim. It also was established through testimony, that Applicant’s Attorney, Jason Redula, was anxious to execute and finalize the settlement on February 19, 2020, in order to obtain the most advantageous settlement for his client. The terms which had been presented in memo form a couple months prior to the informal settlement conference on February 19, 2020, included the Defendant’s agreement not to seek credit for sums received by the Applicant in a civil class action pertaining to hardware received by the Applicant as part of a surgical procedure associated with her workers’ compensation claim. Mr. Redula explained his concerns that Defendants might change their minds if execution of the agreement was postponed, which could have a significantly negative impact on the amount offered for settlement. Both Ms. Lumpkin and Mr. Stewart testified about the rush to complete the execution and witnessing of the settlement once Ms. Lumpkin had agreed to the terms which included Mr. Redula’s agreement to a reduction in attorney’s fees. Ms. Lumpkin did raise issues

of potential improprieties associated with her understanding of the agreement and the witnessing of the agreement, but she confirmed that she did execute the agreement, and that she was not requesting, nor did she want the settlement agreement to be rescinded at the time of the trial.

Mr. Redula provided conflicting testimony that the terms of the agreement were provided to Ms. Lumpkin in December of 2019, for Ms. Lumpkin to review in advance of the informal settlement conference in February of 2020. Mr. Redula believed it was the settlement agreement itself, that was provided, but based on the evidence presented it appears to have been a memo with the essential terms included for Ms. Lumpkin's review. He also testified that he went over the terms of the settlement agreement with Ms. Lumpkin during the February 19, 2020, informal conference. It is understood that the Applicant's Attorney was attempting to resolve the Applicant's claim in the manner they believed would be most advantageous to the Applicant, but this does not negate the attorney's professional obligation to communicate and ensure the Applicant understands. Rule 1.4 of the California Rules of Professional Conduct requires that an attorney explain a matter to the extent reasonably necessary to permit the client to make informed decisions. It does appear that Mr. Redula made attempts both during and after the execution of the settlement agreement to respond to the issues raised by Ms. Lumpkin regarding the calculation of various checks received, and to get answers to address her concerns from the insurance carrier. The primary issue involves a disputed oral side agreement, during the conference where the settlement was executed, which Mr. Redula believes was fully addressed with the reduction of attorney's fees by \$1,000.00 and the separate written agreement executed by Mr. Redula and Ms. Lumpkin providing the details for the reduction evidenced in the settlement agreement. Ms. Lumpkin disputes that this was the only agreement between them, but no additional agreement was similarly substantiated by a signed written document evidencing additional terms.

Ms. Lumpkin's initial concerns, subsequent to the execution of the Compromise and Release agreement involved discrepancies she ascertained in the amounts paid by the carrier, when compared to a printout of benefits. No side agreement with Mr. Redula is mentioned in correspondence admitted as evidence. This issue doesn't appear to have been raised until the parties appeared at conference before Judge Crymes on June 30, 2020, when Ms. Lumpkin asserted that the Applicant's Attorney had received money to which they were not entitled. Thereafter, Ms. Lumpkin filed a small claims court action asserting that she was owed \$3,965.00. Applicant's Exhibit 5 includes the breakdown of the amounts owed, but it appears that only \$1,000.00 is

detailed as an amount the attorney agreed to pay. Which is consistent with the written agreement executed by Mr. Redula and Ms. Lumpkin reducing his fee by \$1,000.00, to provide her with an additional \$1,000.00 in the settlement agreement. The other sums noted in the calculation, 15% for stress, amounts for mileage and amounts for dental would be amounts potentially owed by the insurance carrier. Ms. Lumpkin also provides an exhibit with a lesser attorney's fee noted and suggests that this is an indication of differing fees. In review of this exhibit, Exhibit 15, it appears to be a memo of a calculation of attorney's fees based on a lesser overall settlement sum, which would account for the lesser attorney's fee. However, the amount of the total settlement sum in the finalized settlement agreement is larger, which would establish a larger attorney's fee, since attorney's fees are a percentage of the Compromise and Release settlement amount.

The *Division of Workers' Compensation – Workers' Compensation Appeals Board Policy and Procedure Manual* at Section 1.140 deals with reasonable attorney's fees, and recognizes that a fee of 9-12% of a compromise and release settlement is appropriate for cases of average complexity and a fee in excess of 12% is appropriate for cases of above average complexity. This case is of above average complexity, therefore, an attorney's fee in excess of 12% is appropriate. The fee agreed upon in the fully executed settlement agreement is 14.8% of the amount of the compromise and release agreement. Attorney's fees of 15% are routinely allocated for cases of above average complexity. Therefore, the attorney's fee included in the settlement agreement, as agreed upon by the Applicant, is slightly less than the norm for a case of this complexity. The Applicant's Attorney agreed to reduce the more routinely considered 15% fee by \$1,000.00 in order to be sure Ms. Lumpkin received the additional compensation from a pending request for reimbursement from the insurance carrier, so that the settlement agreement could be finalized without further delay. Redula & Redula received an appropriate fee for their work in the case, and the reduction in fee, noted in the settlement, matches the contemporaneous agreement between the Applicant and Applicant's Attorney regarding the \$1,000.00 reduction. No further reductions or separate payments are indicated in either written agreement. Evidence in the testimony presented establishes that discussions of other outstanding amounts that may have been owed to the Applicant occurred during the negotiations on February 19, 2020. Even though they may have been discussed, they cannot be considered based on California Civil Code §1625, since they preceded or accompanied the execution of written contractual agreements, which were intended to

be the final agreement of the parties, and these additional terms were not included in wither written agreement.

As there is a written settlement agreement, which is acknowledged by the parties as a binding contract, it must, pursuant to California Civil Code §1625 supersede all negotiations & stipulations which preceded or accompanied the agreement, which were not included in the terms of the written agreement. Mr. Lumpkin's and Mr. Stewart's understanding that attorney, Jason Redula had agreed to further reduce his fee or provide payment to Ms. Lumpkin, to offset for additional expenses Ms. Lumpkin had incurred as part of her workers' compensation claim which had not been reimbursed by the carrier, was not included in the finalized settlement agreement, nor was it similarly stated in a separate written agreement, as was the agreement to reduce the attorney's fee by \$1,000.00. The oral side agreement between Ms. Lumpkin and Mr. Redula, disputed by Mr. Redula, is superseded by the written agreement, and cannot be considered once the Compromise and Release Agreement has been fully executed. Therefore, entitlement to the additional sums, not mentioned in the settlement agreement or the companion written agreement between the Applicant and Applicant's Counsel cannot be considered.

LORI ALISON HOLMES

Workers' Compensation Administrative Law Judge

Date: 11/21/2023