

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

LEE ANN MORRETINO, *Applicant*

vs.

**SPROUTS; ACE AMERICAN INSURANCE/GALLAGHER
BASSETT SERVICES, *Defendants***

**Adjudication Number: ADJ14907929
Riverside District Office**

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

Defendant seeks reconsideration of the “Order Denying Petition to Set Aside Order Approving Compromise and Release and/or Vacate Order Approving” (Orders) issued by the workers’ compensation administrative law judge (WCJ) on July 23, 2021 and August 19, 2021. Defendant contends that the settlement signed by the parties and approved by the WCJ did not accurately reflect the settlement agreement between applicant and defendant, and that the WCJ should set aside the Order Approving Compromise and Release (OACR).

We received an answer from applicant, acting in pro per. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of defendant’s Petition, the answer, and the contents of the WCJ’s Report with respect thereto. Based on our review of the record, we will grant the Petition for Reconsideration, rescind the WCJ’s decision, and return this matter to the WCJ for further proceedings.

FACTUAL BACKGROUND

Applicant claimed injury to her fingers while employed by defendant as a grocery clerk on October 26, 2018.

In defendant's petition, it alleges that it sent applicant a Compromise and Release (C&R) settlement document for the sum of \$50,000 and without any deductions from the settlement amount.

Applicant signed the C&R on July 14, 2021.

Defendant signed the C&R on July 15, 2021.

The C&R was approved on July 16, 2021 by the WCJ. The OACR was served on July 21, 2021.

On July 22, 2021, defendant filed a petition to set aside the OACR, asserting that the \$50,000 reflected in the C&R was a typographical error.

On July 23, 2021, the WCJ issued an order denying that petition and indicating that a status conference will be set.

On August 2, 2021, defendant sent a letter to the WCJ again asserting that the \$50,000 was a typographical error, and further stating that the sum due to applicant should read \$30,000.

On August 13, 2021, defendant filed an amended petition to set aside, again asserting that there was a typographical error in the C&R.

On August 18, 2021, applicant filed an opposition to the petition to set aside. On August 19, 2021, the WCJ again denied the petition to set aside.

A status conference was held on August 23, 2021. The Minutes of Hearing state: "Parties appeared by AT&T [teleconference]. This WCJ set status [conference]... Defendant will file Petition for Reconsideration." (Minutes of Hearing, August 23, 2021, p.1.) No evidence was admitted and no testimony was taken on the matter at the August 23, 2021 hearing.

Defendant filed its petition for reconsideration on August 24, 2021 asking us to rescind the order denying the petition to set aside the OACR and to consider setting aside the OACR. Applicant asserts that the parties did agree to the settlement amount of \$50,000 and that the OACR and applicable penalties should be enforced. The Report of the WCJ recommends we deny reconsideration on the grounds that defendant did not show good cause to 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.)¹

We observe that contract principles apply to settlements of workers’ compensation disputes. Stipulations between the parties must be interpreted 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. (*County of San Joaquin v. Workers’ Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193]; Civ. Code, § 1636.) 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 v. Workers’ Comp. 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. (*Sackett v. Starr* (1949) 95 Cal.App.2d 128; Civ. Code, § 1550, see *Sieck v. Hall* (1934), 139 Cal. App. 279; Civ. Code, § 1565.)

“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 hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards.” (Cal. Code Regs., tit. 8, § 10700(b).) 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; *County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118-1121 [65 Cal.Comp.Cases 1]; *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].) However, as recognized in *Weatherall*, the Appeals Board may also, in its discretion, reject factual stipulations and set the matter for hearing and further investigation. (*Weatherall, supra*, at p. 1119; Lab. Code, § 5702.)

Here, the WCJ recommends the petition for reconsideration be denied on the grounds that the mistake was unilateral rather than mutual. However, there is no evidence in the record with respect to defendant’s contentions so we are unable to evaluate the WCJ’s recommendation.

¹ All further statutory references are to the Labor Code unless otherwise stated.

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313. An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal.Wrk.Comp. LEXIS 4947] (Appeals Bd. en banc)² (*Hamilton*)). As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at 475.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

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, § 10544.)

As stated *supra*, here, no documents or testimony were admitted into evidence. In the absence of an evidentiary record, we are unable to evaluate the basis for the WCJ's Order. Therefore, we must return this matter to the trial level for further proceedings.

Further, 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].) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, [The] commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law. (*Id.* at 577.)

² En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Rucker, supra*, at 157-158.) 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. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (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 [57 Cal.Comp.Cases 230].)

The lack of a hearing in this matter prevented either party from exercising their right to call witnesses, cross-examine witnesses and/or introduce evidence in support of their positions or in rebuttal of the opposing parties' evidence. "The improper restriction on the right to present evidence in rebuttal is a deprivation of the constitutional guaranty of due process of law." (*Rucker, supra*, at 157 citing *Pence v. Industrial Acc. Com.* (1965) 63 Cal.2d 48, 50-51.) Therefore, the WCJ denied both parties their fundamental right to due process with respect to the Orders, and we must rescind the Orders and return the matter to the WCJ on due process grounds as well.

The WCAB Rules provide in relevant part that "The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose ...; [i]f an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may ... [i]ssue an order consistent with the notice of intention together with an opinion on decision; or ... [s]et the matter for hearing." (Cal. Code Regs., tit. 8, § 10349.) Here, the WCJ did not issue a Notice of Intention, but rather issued the Orders without making a record at the hearing. Had the WCJ issued a Notice of Intention, the aggrieved party could have objected and requested a hearing. If no party objected, then the Order would become final.

Accordingly, we grant defendant's Petition, rescind the July 23, 2021 and August 19, 2021 Orders, and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the July 23, 2021 and August 19, 2021 Orders is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the July 23, 2021 and August 19, 2021 Orders of the WCJ are **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 20, 2021

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

**LEE ANN MORRETINO
WORK COMP RESOLUTIONS, INC.**

HAV/ara

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