

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

**CARLOS ALVAREZ, *Applicant***

**vs.**

**MULCH MASTERS; STATE COMPENSATION  
INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ13736015  
Fresno District Office**

**OPINION AND ORDER  
DISMISSING PETITION  
FOR RECONSIDERATION**

Applicant, acting in pro per,<sup>1</sup> seeks reconsideration of the Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ) on June 24, 2021, wherein the WCJ approved a Compromise and Release (C&R) submitted by the parties.

Applicant contends that he was pressured by his attorney to sign a C&R, that he does not agree to the terms, and the WCJ should set aside the OACR. Applicant further contends that body parts that were not previously mentioned were added to the C&R.

We received an answer from State Compensation Insurance Fund (SCIF).

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied or treated as a Petition to set-aside the OACR.

We have considered the allegations in the Petition, the answer, and the contents of the Report with respect thereto.

Based on our review of the record and for the reasons discussed below, we will dismiss the Petition as premature and return this matter to the trial level for consideration of the Petition as one to set aside the OACR.

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<sup>1</sup> Applicant filed a Notice of Dismissal of Attorney on August 11, 2021.

## BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury in the form of a hernia (body part 411<sup>2</sup>) occurring on June 15, 2020, while employed by defendant as a supervisory mechanic.

On November 10, 2020, applicant filed a declaration of readiness (DOR) on the issue of transfer of care. (DOR, dated November 10, 2020, p. 2.)

On January 13, 2021, the matter was ordered taken off calendar at the joint request of the parties, although the minutes do not indicate whether applicant was present at the hearing.

On February 18, 2021, Applicant was evaluated by Qualified Medical Examiner (QME) Maureen Miner, M.D. Dr. Miner also reviewed applicant's medical records and the results of diagnostic radiological scans. Dr. Miner issued a QME report dated February 18, 2021, in which she found that applicant's right lower quadrant ventral hernia was work-related. (Report of Maureen Miner, M.D. (QME Report), February 18, 2021, at pp. 8, 11.) Dr. Miner recommended ongoing future medical care, noting that applicant "is at risk for surgical re-do due to the fact that he has a mesh in place and given his young age. At least one surgery is probable." (QME Report, at p. 11.)

On April 30, 2021, applicant and SCIF entered into a C&R, based on the findings in Dr. Miner's QME Report. (C&R, dated April 30, 2021.)

On May 24, 2021, the WCJ issued an order suspending action (OSA), stating as follows:

Other: On page 2 of the QME report from Dr. Maureen Miner, MD, the QME states, "Interpreter services were provided by Jersahid Lopez (certification #500252)." However, in the C&R submitted for review there is no interpreter signature anywhere on the document. In addition, although the QME gives a 4%WPI, the parties failed to provide a string rating to confirm the stated 11% PD. Parties are to correct the above and submit an 'Amended' C&R for consideration.

(OSA, p. 1, dated May 20, 2021 and served May 24, 2021)

On June 21, 2021, applicant signed an amended C&R assisted by a certified Spanish interpreter. The body parts being settled were described in Paragraph No. 1 as 411 hernia, 410 abdomen, and 400 trunk. (First amended C&R, dated June 22, 2021, ¶ 1, p. 3.) The date of injury was June 15, 2020. (*Id.*)

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<sup>2</sup> "Hernia" is listed as body part 411 on the Division of Workers' Compensation (DWC) body parts table.

On June 22, 2021, attorney for defendant signed the first amended C&R.

On June 22, 2021, defendant submitted the signed amended C&R to the WCJ for approval by way of e-filing and served it by way of mail.

On June 24, 2021, the WCJ issued the Order Approving Compromise and Release (OACR) without holding a hearing, which was served on applicant by way of mail on July 7, 2021.

On August 11, 2021, applicant filed a notice of dismissal of attorney.

On August 11, 2021, applicant filed a petition for reconsideration or, in the alternative, a petition to set aside the first amended C&R.

On October 1, 2021, defendant filed a DOR for a hearing on January 4, 2022, on the issue of applicant's Petition.

On April 22, 2022, the WCJ issued a Report.

## DISCUSSION

We note that pursuant to Labor Code<sup>3</sup> section 5909, a petition for reconsideration is generally considered denied by operation of law if the Appeals Board does not act on the petition within 60 days of filing. (Lab. Code, § 5909.) However, "it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice ...." (*Shiple v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shiple*, the Appeals Board denied the applicant's petition for reconsideration because the Appeals Board had not acted on the petition within the statutory time limits of section 5909. (Lab. Code, § 5909.) This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision, holding that the time to act on applicant's petition was tolled during the period that the file was misplaced. (*Shiple, supra*, at 1108.) Like the Court in *Shiple*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." In this case, the Appeals Board failed to act on applicant's Petition within 60 days of its filing on August 11, 2021, through no fault of the parties. Therefore, considering that the Appeals Board's failure to act on the Petition was in error we find that our time to act on the Petition was tolled.

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<sup>3</sup> All further statutory references are to the Labor Code, unless otherwise noted.

“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.”<sup>4</sup> (Lab. Code, § 5803.)

As the WCJ notes, the legal principles governing compromise and release agreements are the same as those governing other contracts. (*Burbank Studios v. Workers’ Co. Appeals Bd. (Yount)* (1982) 134 Cal.App.3d 929, 935.) 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. (*Id.*) 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.) Stipulations between the parties must be interpreted to give effect to the mutual intention of the parties 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.)

Here, applicant contends that there was not a meeting of the minds as to the body parts being settled, specifically applicant claims that there was no mention of “trunk” as a body part prior to its inclusion in the C&R. However, the limited evidentiary record bars a meaningful review of applicant’s contentions. Applicant also contends that his attorney did not explain the C&R to him, did not explain future medicals to him, and that he felt pressured by his attorney to sign the C&R. Applicant improperly attached documents to his Petition that appear to be emails between applicant and his prior counsel.<sup>5</sup> If applicant did not understand the C&R, or understand that the

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<sup>4</sup> 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 1119; Lab. Code, § 5702.)

<sup>5</sup> We note that applicant attached documents to the Petition in violation of WCAB Rule 10945. (Cal. Code Regs., tit. 8, § 10945(c)(2).) The Appeals Board’s record of proceedings is maintained in the adjudication file and includes: the pleadings, minutes of hearing, summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits identified 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

OACR extinguished defendant's responsibility to provide future medical care, it calls into question whether the parties mutually agreed upon the same thing, which then calls into question whether a contract was created.

“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).) The Appeals Board also has a constitutional mandate to “ensure substantial justice in all cases” and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].)

We note that applicant signed the C&R with the assistance of an interpreter in the sense that an interpreter translated the first amended C&R. (first amended C&R, pp. 7-8.) However, there is no evidence in the record regarding what applicant understood about the terms of the contract, nor what applicant was told with respect to the adequacy of the settlement. Because no hearing was held, the WCJ did not have the opportunity to assess applicant's understanding of the proposed settlement agreement. Consequently, the record is insufficient, both as to the issue of whether applicant understood the terms of the settlement agreement and whether the settlement was adequate.

We agree with the WCJ that applicant is entitled to a hearing on his Petition to set aside the first amended C&R. 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].) The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) 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

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not been received or offered in evidence are not part of the record of proceedings.” (Cal. Code Regs., tit. 8, § 10803.) Here, the documents attached to the Petition were not admitted into evidence and thus we have not considered them.

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].)

A WCJ's decision must be based on admitted evidence and must be supported by substantial evidence (Lab. Code, §§ 5903, 5952(d); *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *Le Vesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]). "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, at 475.)

To the extent that defendant contends that it is entitled to 'repayment' from applicant, we direct defendant to section 4909, which allows a defendant to seek a credit. (Lab. Code, § 4909; see *Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827 [45 Cal.Comp.Cases 1106].) Section 4909 provides that any payment received by the injured employee, which was not then due and payable, may be taken into account by the appeals board in fixing the amount of the compensation to be paid. (Lab. Code, § 4909.) The acceptance of any such payment shall not operate as a waiver of any right or claim which the employee has against the employer. (*Id.*)

Accordingly, dismiss the 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 the 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, filed August 11, 2021, is **DISMISSED**.

**IT IS FURTHER ORDERED** that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**June 21, 2022**

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

**CARLOS ALVAREZ, IN PRO PER  
STATE COMPENSATION INSURANCE FUND**

**JB/abs**

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