

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

GUADALUPE HURTADO, *Applicant*

vs.

**THE JM SMUCKER COMPANY; insured by ACE
INDEMNITY INSURANCE, adjusted by GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ10855030
Oxnard District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of an Award, issued by the workers' compensation administrative law judge (WCJ) on February 16, 2022, wherein the WCJ approved stipulated settlement agreements.

Defendant contends that the parties made a mutual mistake regarding the periods of temporary disability.

We received an answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

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 Award.

BACKGROUND

Applicant claimed injury to various body parts (head, neck, back, upper extremities, and lower extremities) on July 11, 2016, while employed by defendant as a janitor.

As relevant herein, the parties entered into the following stipulations, using DWC-WCAB form 10214(a), revised May 2020:

The body parts being settled were described in Paragraph No. 1 as head, neck, back, upper extremities, lower extremities, and lumbar spine. (Stipulations with Request for Award, dated February 1, 2022, ¶ 1, p. 5.) The date of injury was July 11, 2016. (*Id.*)

Pursuant to paragraph No. 2, the injuries caused temporary disability for the period February 7, 2018 through August 26, 2019. (Stipulations with Request for Award, dated February 1, 2022, ¶ 2, p. 6.) The parties stipulated that the temporary disability indemnity was already paid. (*Id.*) Paragraph 2(a) is blank. (Stipulations with Request for Award, dated February 1, 2022, ¶ 2(a), p. 6.)

Pursuant to paragraph No. 3, the injuries caused permanent disability of 22%, beginning the week of December 20, 2019, for which indemnity is payable. (Stipulations with Request for Award, dated February 1, 2022, ¶ 3, p. 6.)

Pursuant to paragraph No. 5, the parties agree that defendant is to pay, adjust, or litigate any medical legal expenses and or liens. All defenses are retained and WCAB is jurisdiction retained. (Stipulations with Request for Award, dated February 1, 2022, ¶ 5, p. 6.)

In Paragraph 9, the parties stipulated that “[a]ll amounts periods and sums according to proof.” (Stipulations with Request for Award, dated February 1, 2022, ¶ 9, p. 7 .)

On February 1, 2022, the parties submitted executed Stipulations with Request for Award.

On February 1, 2022, based on the executed Stipulations with Request for Award, the WCJ issued an Award.

On February 16, 2022, the WCJ issued the Award, which states as follows:

The AWARD IS MADE in favor of GUADALUPE HURTADO against ACE INDEMNITY INSURANCE administered by GALLAGHER BASSETT; of:

- (A) Additional temporary disability indemnity in accordance with section 2(a) above;
 - (B) Permanent disability indemnity in accordance with section 3 above;
Less the sum of \$3,719.25, payable to applicant’s attorney as the reasonable value of services rendered. Fees are to be commuted pursuant to section 6;
 - (C) Liens in accordance with section 7;
 - (D) Further medical treatment in accordance with section 4;
 - (E) Reimbursement for medical-legal expenses in accordance with section 5;
 - (F) Stipulations in sections 8 and 9 are approved;
- (February 16, 2022 Award, ¶ 1.)

On March 9, 2022, defendant filed a Petition for Reconsideration, contending that the temporary disability period defined in the executed stipulations and subsequent Award is not correct. Defendant contends that there were two distinct periods of disability, as follows:

TD benefits paid by Defendants, as evidenced by their benefits reporting was over two periods (#1: 2/7/18 to 8/13/18 and #2: 8/2/19 to 8/26/19) for a total of 30 weeks and 3 days for \$10,564.80. The previously identified period was 2/7/18 to 8/26/19 for \$28,073.60.
(Petition, p. 2.)

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. The legal principles governing compromise and release agreements, and by extension, stipulations with request for award, are the same as those governing other contracts. (*Burbank Studios v. Workers’ Co. Appeals Bd. (Yount)* (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 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.)

The parties’ intention should be ascertained, if possible, from the writing alone and, if an absurdity is not involved, the clear language of the contract governs its interpretation. (Civ. Code, §§ 1636, 1638, 1639; *TRB Investments, Inc. v. Fireman’s Fund Ins. Co.* (2006) 40 Cal.4th 19, 27’ *County of San Joaquin v. Workers’ Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) 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; *TRB Investments, supra*, at 27; *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.) The whole of a contract is to be taken together,

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

so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other. (Civ. Code, § 1641.) The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage. (Civ. Code, § 1644.)

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 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 1118-1121; *Robinson v. Workers’ Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers’ Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].)

Here, the parties stipulated that temporary disability ended August 26, 2019 and permanent disability began the week of December 20, 2019. (Stipulations with Request for Award, dated February 1, 2022, ¶¶ 2-3, p. 6.) They also stipulated that temporary disability indemnity was already paid. (Stipulations with Request for Award, dated February 1, 2022, ¶ 2, p. 6.) There is no indication in the record that the parties intended additional temporary disability and paragraph 2(a)

of form 10214(a)² regarding additional temporary disability is blank. (Stipulations with Request for Award, dated February 1, 2022, ¶ 2(a), p. 6.) Here, taking all of the stipulations together, and based on the plain language of the Stipulations with Request for Award, the parties stipulated that temporary disability benefits have been paid, no additional temporary disability was claimed, temporary disability ended August 26, 2019, and permanent disability began the week of December 20, 2019. (Stipulations with Request for Award, dated February 1, 2022, ¶¶ 2, 2(a), 3, 9.) Moreover, the parties agree that they stipulated that “all amounts periods and sums according to proof.” (Petition, at 3:7-9; Answer, at 2:12; Report, p. 2.)

As the WCJ noted, there were no documents or evidence in support of Petitioner’s contention that there was a mutual mistake. (Report, p. 3.) “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 v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Board en banc).) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Hamilton, supra*, at 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

We agree with the WCJ that the determination of a mutual mistake is a triable issue of fact and notice and opportunity to be heard must be afforded. (Report, p. 2.) 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 [88 Cal.Rptr.2d 516].) A fair hearing includes, but is not limited to the opportunity to call and cross-examine witnesses; introduce and

² WCAB Rule 10205.2 sets forth forms to be used to settle case by either a compromise and release or stipulation with request for award. (Cal. Code Regs., tit. 8, § 10205.2.) Here, the parties appropriately used DWC-CA form 10214(a) to settle case by stipulation with request for award. (Cal. Code Regs., tit. 8, § 10205.2(a).)

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*, 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.4 703, 710 [57 Cal.Comp.Cases 230].) In the absence of an evidentiary record we must return this matter to the trial level for further proceedings.

Accordingly, we 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 defendant can provide evidence in support of its 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 March 9, 2022, 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/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 9, 2022

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

**GUADALUPE HURTADO
LAW OFFICE OF PAUL F. KINSLER
COLEMAN CHAVEZ**

JB/abs

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