

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

**MARTIN DOMINGUEZ, *Applicant***

**vs.**

**JOHN DONDERO FARMS; PREFERRED EMPLOYERS INSURANCE COMPANY,  
*Defendants***

**Adjudication Numbers: ADJ10089398, ADJ10089400  
Stockton District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We granted reconsideration in order to further study the factual and legal issues in these cases. This is our Opinion and Decision After Reconsideration.<sup>1</sup>

Applicant<sup>2</sup> seeks reconsideration of the Findings of Fact, Orders and Opinion on Decision (F&O) issued by the workers' compensation administrative law judge (WCJ) on January 15, 2020. By the F&O, the WCJ found that the "Parties are not allowed to continue with the replacement panel." It was ordered that the replacement panel is not appropriate and is not allowed to be used.<sup>3</sup> In the Opinion on Decision, the WCJ stated that the issue between the parties was whether there is good cause to set aside the Stipulations with Request for Award that were approved in each case. The WCJ explained that he had not found good cause to set aside the two Awards.

Applicant contends that he did not understand the interpreter at the hearing when he signed the Stipulations with Request for Award and the Awards are not adequate.

We received an answer from defendant. The WCJ issued a Joint Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration. He subsequently issued an Amended Report to correct clerical errors in the original Report.

We have considered the allegations of applicant's Petition for Reconsideration, defendant's

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<sup>1</sup> Commissioner Gaffney was previously on this panel and is no longer available. Another panelist was assigned in his place.

<sup>2</sup> Applicant is represented by an attorney, but he filed the petition himself. The petition was written in Spanish and was translated by a certified Spanish interpreter at the WCJ's request. (Amended Report, March 6, 2020, pp. 1-2.)

<sup>3</sup> It is unclear why there was a finding of fact and order in the decision regarding a replacement panel since this was not an issue identified at trial.

answer and the contents of the WCJ's Reports with respect thereto. Based on our review of the record and for the reasons discussed below, we will rescind the F&O and issue a new decision finding that applicant has not shown good cause to set aside the Awards. We will also issue an order denying his request to set aside the Awards.

### **FACTUAL BACKGROUND**

Applicant sustained two injuries while employed as a farm worker by John Dondero Farms: 1) to the cervical spine, lumbar spine and thoracic spine on January 31, 2014 (ADJ10089398) and 2) to the low back on November 19, 2014 (ADJ10089400). Applicant is represented by an attorney.

The parties entered into Stipulations with Request for Award for both cases on February 19, 2019. Both agreements stated that the settlement was based on the reporting of the agreed medical evaluator (AME), Dr. Donald Pang. (WCAB Exhibit X, Stipulations with Request for Award, February 19, 2019, pp. 7 and 17.) There are rating strings in the Stipulations outlining applicant's permanent disability level for each injury per Dr. Pang's reporting. (*Id.* at pp. 7 and 17.) The January 31, 2014 injury was rated to 26% permanent disability and the November 19, 2014 was rated to 15% permanent disability. (*Id.*) The agreements are signed by applicant, his attorney, defendant's attorney and a certified interpreter identified as Beatriz Obregon (certification number 100612). (*Id.* at pp. 7-9 and 17-19.) The WCJ issued Awards for each case pursuant to the parties' stipulations.

Applicant filed a petition for reconsideration of the Awards on March 8, 2019.<sup>4</sup> We issued an Opinion on Order Dismissing Petition for Reconsideration on May 9, 2019. The matter was returned to the trial level to be treated as a petition to set aside the Awards.

The matter proceeded to trial on October 10, 2019 on the sole issue of whether there is good cause to set aside the Stipulations with Request for Award. (Order of Consolidation; Minutes of Hearing; Summary of Evidence, October 10, 2019, p. 2.) At that time, exhibits were admitted into the record and testimony taken from applicant. The exhibits included the reporting and deposition transcript of the AME Dr. Pang, as well as copies of permanent disability checks and a benefits printout for both cases. (*Id.* at p. 3.) Applicant testified as follows in relevant part:

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<sup>4</sup> Applicant filed the petition himself although he was still represented by an attorney.

He has been to court numerous times. The case was set for trial February 19, 2019. He was here. On February 19, 2019, stips were executed and they were reviewed by applicant for both injuries. The November 19, 2014 injury was a 15 percent permanent disability stipulation, and the January 31, 2014 stipulation was a 26 percent. He recalls signing these documents. He identifies his handwriting on the Petition for Reconsideration. He filed it because, first, the numbers were not written right, and he was not in agreement with the stipulations. He was not in agreement with 26 percent permanent disability. He was not in agreement with the permanent disability advances. He was not in agreement with the 15 percent permanent disability for the November 19, 2014 injury. His prior attorney had told him he had 42 percent permanent disability. Again, he disputes the 15 percent and 26 percent split between the two injuries. He recalls Dr. Pang's evaluation. In his mind, he did participate in the exam. Permanent disability advances are disputed based on his pay stubs. He has them and they do not equal a PDA amount. He kept his pay stubs.

#### QUESTIONING BY THE WCJ:

He understands the interpreter today, but did not understand her when the stipulations were signed.

*(Id. at pp. 5-6.)*

The interpreter at trial is identified as Beatriz Obregon. *(Id. at p. 1.)* As noted above, the same interpreter signed the two Stipulations with Request for Award. (WCAB Exhibit X, Stipulations with Request for Award in ADJ10089398 and ADJ10089400, pp. 9 and 19.)

Applicant filed a request for corrections to the trial's Minutes of Hearing and Summary of Evidence. The WCJ vacated submission of the matter to address this request. (Order Vacating, December 3, 2019.) The matter proceeded to a hearing on January 13, 2020. The Minute Order from that date reflects that there was no objection to applicant's requested corrections and the Minutes were amended accordingly. The matter was ordered submitted on the issue as identified at the October 10, 2019 trial.

The WCJ issued the F&O as outlined above. In his Amended Report, the WCJ responded to applicant's contentions in his petition as follows in relevant part:

The Petition was filed in Spanish and was interpreted by ***Gina Guerra Management Services Technician Certified Spanish Translator WCAB, Stockton District Office.***

...

The Applicant is and was represented by a certified expert in workers compensation who was present at the 2/19/19 hearing and explained the challenged stipulation with request for award to Applicant.

The interpreter whom the Applicant said he did not understand in explaining the stipulations with request for award interpreted did understand her at this last trial of 10/14/19.

During the 2/19/19 hearing in which the stipulations were approved originally Applicant did not express inability to understand this interpreter or any other concern until his 3/8/19 petition for reconsideration. I find his statements to the contrary not to be credible.

...  
The Applicant was represented at all times relevant herein starting on 7/16/18 by Sarah [Carr] a certified specialist. The stipulations were interpreted by a certified interpreter Bea Obregon who has been interpreting at the Stockton WCAB for approximately 25 years...Applicant's testimony that he did not understand the interpreter or she was busy is not credible. Ms. [Carr] has represented to the court she assisted and participated in explaining the Stipulations to her client.

(Amended Report, March 6, 2020, pp. 1-2, 15-16, emphasis in original.)<sup>5</sup>

## DISCUSSION

### I.

“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.)<sup>6</sup>

Section 5702 states:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

(Lab. Code, § 5702.)

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) As defined

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<sup>5</sup> The Amended Report referred to applicant's attorney as Sarah "Connor," but the record reflects that the attorney's last name is Carr.

<sup>6</sup> All further statutory references are to the Labor Code unless otherwise stated.

in *Weatherall*, “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.” (*Weatherall, supra*, 77 Cal.App.4th at p. 1119.)

“Good cause” to set aside an order or stipulations 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.* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Worker’s 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] (writ den.)) To determine whether there is good cause to set aside the Awards, the circumstances surrounding their execution and approval must be assessed. (*Weatherall, supra*, 77 Cal.App.4th at pp. 1118-1121; *Robinson v. Workers’ Comp. Appeals Bd. (Robinson)* (1987) 199 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].)

Applicant contends that he did not understand the interpreter when he signed the two Stipulations with Request for Award. As the moving party, applicant has the burden of proof to show by a preponderance of the evidence that he should be relieved from the stipulations he entered into with defendant while he was represented by an attorney. (See Lab. Code, § 5705 [the burden of proof rests upon the party with the affirmative of the issue]; see also Lab. Code, § 3202.5 [“All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence”].)

The same interpreter appeared at the October 10, 2019 trial that acted as the interpreter when the two Stipulations with Request for Award were executed. The WCJ stated in his Amended Report that he did not find applicant credible that he did not understand this interpreter when he signed the Stipulations. We have given the WCJ’s credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)<sup>7</sup>

There is no evidence in the record to support a finding that the stipulations were based on a mutual mistake of fact, duress, fraud, undue influence, or procedural irregularities. Applicant did not meet his burden of showing good cause to be relieved of the two Stipulations with Request for Award.

## II.

Applicant also takes issue with whether the permanent disability rating for each Award is adequate. It is acknowledged that decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310].) Thus, we consider whether there is substantial evidence in the record to support the permanent disability ratings in each Award.

WCAB Rule 10700(b) provides:

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 Division of Workers' Compensation (DWC) – Workers' Compensation Appeals Board Policy and Procedural Manual further provides:

Stipulations with Request for Award shall be considered adequate and an Award shall issue if the stipulated level of permanent disability is reasonably within the range of evidence based on the medical reports submitted, medical care is awarded where appropriate based upon the medical reports submitted, and any other issues are adequately resolved by the stipulations.

(DWC Workers' Compensation Appeals Board Policy and Procedural Manual (2013 Revision), section 1.91.)<sup>8</sup>

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<sup>7</sup> On its face, applicant's assertion that he understood the interpreter at the October 10, 2019 trial, but did not understand the same interpreter at a previous hearing when the stipulations were executed lacks credibility.

<sup>8</sup> The Manual can be found at [www.dir.ca.gov/wcab/WCAB\\_Policy\\_ProcedureManual/Policy\\_andProcedure\\_Manual.pdf](http://www.dir.ca.gov/wcab/WCAB_Policy_ProcedureManual/Policy_andProcedure_Manual.pdf).

Both Stipulations with Request for Award reflect that they were based on ratings of the reporting from the AME Dr. Pang. The parties presumably choose an AME because of the AME's expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) We will follow the opinions of the AME unless good cause exists to find their opinion unpersuasive. (*Ibid.*)

Furthermore, review of Dr. Pang's reporting and deposition transcript show that he conducted a thorough and comprehensive evaluation of applicant including two physical examinations and review of extensive records. He explained the basis for his impairment ratings and for apportionment between the two injuries for applicant's lumbar spine condition to a reasonable medical probability. (See *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

We discern no basis in the record to disturb the WCJ's conclusion that the stipulations agreed upon by the parties were adequate to compensate applicant for his level of permanent disability for each injury.

In conclusion, we will rescind the F&O in its entirety due to the erroneously issued finding of fact and order regarding a replacement panel. We will issue a new decision finding that applicant has not shown good cause to set aside the Awards and order his request to set aside the Awards be denied.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Orders and Opinion on Decision issued by the WCJ on January 15, 2020 is **RESCINDED** and is **SUBSTITUTED** with the following:

**FINDING OF FACT**

1. Applicant has not shown good cause to set aside the February 19, 2019 Stipulations with Request for Award in ADJ10089398 and ADJ10089400.

**ORDER**

**IT IS ORDERED** that applicant's request to set aside the Stipulations with Request for Award for ADJ10089398 and ADJ10089400 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ AMBER INGELS, DEPUTY COMMISSIONER



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

**April 25, 2022**

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

**CUNEO BLACK WARD & MISSLER  
MARTIN DOMINGUEZ  
URIARTE & CARR**

*AI/pc*

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