

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

MELISSA KEEFER, *Applicant*

vs.

**ELK GROVE UNIFIED SCHOOL DISTRICT, SCHOOLS INSURANCE AUTHORITY,
*Defendants***

**Adjudication Number: ADJ10914052
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report 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, which we adopt and incorporate, we will deny reconsideration.

We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*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 determination. (*Id.*)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 11, 2022

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

**MELISSA KEEFER, IN PRO PER
DAVID CAVA**

PAG/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

<u>Date of Injury:</u>	January 26, 2017
<u>Age on DOI:</u>	50
<u>Occupation:</u>	Para educator
<u>Parts of Body Injured:</u>	Neck, back, psyche, head, mouth, arm, hand, abdomen, brain, jaw, body systems, chest, trunk, thorax, thoracic spine, heart, lungs, arteries, bilateral shoulders, nervous system, stress, circulatory system, tachycardia, cardiac arrhythmia, palpitations, chest, hypertension, left carotid artery, ischemic changes, excretory system, respiratory system, dyspnea, seizures, epilepsy
<u>Identity of Petitioners:</u>	Applicant
<u>Timeliness:</u>	Petition was filed timely
<u>Verification:</u>	Petition was verified
<u>Date of Order:</u>	August 4, 2022 (served August 5, 2022)
<u>Petitioners Contentions:</u>	Applicant contends the Board acted without or in excess of its powers by the order, decision or award, and the order, decision or award were procured by fraud.

II

FACTS

Applicant filed an Application for Adjudication claiming an injury to the neck and back arising on January 26, 2017 due to being knocked down by a student. Applicant saw orthopedic surgeon Dr. Clifford as an AME and received treatment and diagnostic studies. The parties entered into a settlement agreement by Compromise and Release, which was approved on January 9, 2019. The Compromise and Release is for \$40,000 and lists the neck, back, psych, head, mouth, arm, hand, body syst[ems], abdomen, head, brain, and jaw. Applicant dismissed her attorney on April 19, 2021 and filed a Petition to Reopen on May 28, 2021.

The matter proceeded to trial on the issue of whether the WCAB has jurisdiction to address Applicant's petition and whether there is good cause to reopen/set aside. After trial, it was found that the WCAB has jurisdiction and there is no good cause to reopen/set aside. Applicant filed a Petition for Reconsideration. Defendant filed an Answer.

III

DISCUSSION

JURISDICTION TO HEAR THE ISSUE

Labor Code section 5803 states as follows:

The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division, and the decisions and orders of the rehabilitation unit established under Section 139.5. At any time, upon notice and after an 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.

This power includes the right to review, grant or regrant, diminish, increase, or terminate, within the limits prescribed by this division, any compensation awarded, upon the grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated. The Court of Appeal of California held that within five years of the date of injury, the appeal board may rescind, alter, or amend a Compromise and Release like other orders decisions, and awards. upon a showing of good cause. *Smith v. WCAB* (1985) 50 Cal. Comp. Cases 311.

The parties stipulated that the claimed injury in January 2017. Applicant received an Order Approving Compromise and Release dated January 9, 2019. Applicant filed the Petition to Reopen on May 28, 2021. This petition is within five years of the date of injury. The WCAB has jurisdiction to hear the issue.

GOOD CAUSE TO REOPEN

Generally good cause to rescind an Order Approving Compromise and Release requires showing that the settlement was secured by fraud, mutual mistake, duress, undue influence, or substantial procedural irregularities. Applicant claims fraud and duress, of which there is no credible evidence.

Negligence, change of heart, dissatisfaction, or regret alone do not show to good cause.

A settlement by Compromise and Release includes claims that may later arise or develop as a result the subject injury. Section two of a Compromise and Release states as follows:

Upon approval of this compromise agreement by the Workers' Compensation Appeals Board or a workers' compensation administrative law judge and payment in accordance with the provisions hereof, the employee releases and forever discharges the above-named employer(s) and insurance carrier(s) from all claims and causes of action, whether now known or ascertained or which may hereafter arise or develop as a result of the above-referenced injury(ies), including any and all liability of the employer(s) and the insurance carrier(s) and each of them to the dependents, heirs, executors, representatives, administrators or assigns of the employee. [...] (Emphasis added.)

The signature page of a Compromise and Release states, "By signing this agreement, applicant (employee) acknowledges that he/she has read and understands this agreement and has had any questions he/she may have had about this agreement answered to his/her satisfaction."

Here, the parties included an addendum to the Compromise and Release that indicates the agreement also settles compensable consequence injuries. The addendum also indicates the parties acknowledge Applicant's return to work for two days and alleged exacerbation at that time, and the settlement expressly includes any injury, aggravation, exacerbation, and/or compensable consequence sustained during that time. The Compromise and Release in this case includes an executed signature page and an acknowledgement completed by a notary.

In her Petition to Reopen Applicant claims the following: She told her attorney that statements in the Compromise and Release were untrue that indicate she did not sustain another injury when she returned to work for two days. Applicant claims her attorney responded that Applicant would have to pay back the award of \$40,000. Applicant claims she believed there was no recourse. Applicant claims she had medical diagnostics to prove her injury before the Compromise and Release was approved but her first attorney retired unexpectedly, and her second attorney had all the information but did not utilize all the channels available and did not have the second injury evaluated properly. Applicant claims her second attorney allowed an inadequate amount of \$2,500 for the second injury of a stroke, dysphagia, and other body parts. Applicant claims \$8,282.50 is less than a fair amount for future medical care. Applicant claims the body part of 800 body systems in the Compromise and Release was not specific and was neither compensated for nor rated. Applicant claims the surveillance constituted stalking and harassment. Applicant claims the surveillance continued after the settlement and that the defense attorney stalked her.

At trial, Applicant testified that she wanted to settle and had a conversation with her attorney. She testified that she was getting nowhere in the system and thought she could go out and pursue medical care privately. She testified that she signed the Compromise and Release after talking to her attorney about requesting an offer in response to her demand. She testified that she signed the Compromise and Release and trusted her attorney to look out for her best interests.

This is consistent with her deposition testimony on September 23 2021, wherein Applicant testified that she settled her case to put it behind her; she thought she could get out because no one was listening to her inside the case, and she could not get answers. She testified that she knew she was seriously injured and needed care. (Defendant Exhibit V)

The Compromise and Release was signed and approved in January 2019. Before entering into the settlement agreement, Applicant was evaluated by AME Dr. Conrad Clifford and received treatment and diagnostics including a Modified Barium Swallow Evaluation, MRI of the brain, and Duplex Scan of the bilateral extra cranial arteries.

Defense counsel declared under penalty of perjury that he did not personally conduct sub-rosa surveillance of Applicant. (Defendant Exhibit FF) Furthermore, he did not match the photograph Applicant presented.

In the Petition for Reconsideration Applicant indicates he has not had the opportunity to be heard regarding her occupation and group number. She contends the wrong Occupational Group Number was used to calculate her permanent disability and it was not listed on the Compromise and Release. The parties stipulated that Applicant was a para educator in the Compromise and Release and then again in the Pre-Trial Conference Statement. either the occupation nor the group number were issue submitted for trial. The Minutes of Hearing from the first day of trial indicate the parties confirmed that the Stipulations and Issues were read correctly.

In the Petition for Reconsideration, Applicant indicates she has new evidence by witness Teisha Gwender of a declaration to proclaim that Defense counsel was the person conducting surveillance. Ms. Gwender was listed on the Pre-Trial Conference Statement and was not called to testify at trial.

Applicant has not established good cause to reopen/set aside the Order Approving.

IV

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Applicant's Petition for Reconsideration be denied.

DATE: September 1, 2022

Ariel Aldrich

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE