

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

**MICHAEL SAMARAS, *Applicant***

**vs.**

**DELUXE LABORATORIES; ZURICH NORTH AMERICA, Administered by  
ESIS, INC., *Defendants***

**Adjudication Number: ADJ7387935  
Van Nuys District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

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

**I.**

Defendant, Zurich North America (Zurich), petitioned for reconsideration of the Findings of Fact and Orders issued by the workers' compensation administrative law judge (WCJ) in this matter on September 2, 2020. In that decision, the WCJ found that Zurich, which insured the employer for workers' compensation liability, ESIS, which was Zurich's adjusting agency, and Richard Villasenor, Esq., Zurich's attorney, each engaged in dilatory and frivolous tactics in not providing various modalities of medical treatment previously awarded. The WCJ therefore assessed sanctions under Labor Code section 5813 against Zurich and ESIS of \$2,500 each and against defendant's attorney of \$250.

The parties stipulated that applicant, Michael Samaras sustained injury to his neck and back arising out of and in the course of his employment as a driver on November 25, 2008, by defendant, Deluxe Laboratories, then insured for workers' compensation liability by Zurich.

Zurich contends in its petition for reconsideration that the WCJ erred in assessing sanctions under Labor Code section 5313.

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<sup>1</sup> Following the grant of reconsideration, Deputy Commissioner Schmitz became unavailable to participate. Another commissioner was assigned in her place.

Applicant filed an answer contending that the petition for reconsideration should be denied. The WCJ issued a report in which he recommended that the petition for reconsideration be denied.

Subsequently, at our request the parties participated in a commissioners' settlement conference and agreed to resolve this matter by Compromise and Release.

The Compromise and Release was filed on March 7, 2022. The amount of the settlement is \$454,794, less credit for permanent disability indemnity paid of \$15,170.60, less an attorneys' fee of \$81,862, and less \$93,346.00 to fund a Medicare set aside trust. The Compromise and Release also provides that defendant will adjust or litigate liens of record. In addition, defendant requests that the sanction orders issued by the WCJ be rescinded.

## II.

As a preliminary matter, we note that a petition for reconsideration is generally considered denied by operation of law if the Appeals Board does not grant the petition within 60 days after it is filed. (Lab. Code, § 5909.) However, we believe that "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 it had not acted on the petition within the statutory time limits of Labor Code section 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*, 7 Cal.App.4th at p. 1108.) Like the Court in *Shiple*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Shiple, supra*, 7 Cal.App.4th at p. 1108.) In this case, the Appeals Board failed to act on the Petition for Reconsideration within 60 days of its filing through no fault of the parties. Therefore, we find that our time to act on the petition was tolled.

Labor Code section 5001 states in pertinent part that "[n]o release of liability or compromise agreement is valid unless it is approved by appeals board or referee."

WCAB Rule 10700 states that:

"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.)

Labor Code section 5002 states that:

“A copy of the release or compromise agreement signed by both parties shall forthwith be filed with the appeals board. Upon filing with and approval by the appeals board, it may, without notice, of its own motion or on the application of either party, enter its award based upon the release or compromise agreement.”

After considering the Compromise and Release in light of the entire record, we conclude that the settlement amount is adequate and that the agreement is in the best interest of applicant. We have considered that any potential right to death benefits is being released. We also conclude that the attorneys’ fee requested is reasonable and should be allowed. In addition, we conclude that the sanction orders issued by the WCJ pursuant to Labor Code section 5813 should be rescinded.

Therefore, we will rescind the Findings of Fact and Orders issued by WCJ on September 2, 2020, and approve the Compromise and Release.

Finally, we commend the parties for engaging in good faith negotiations and successfully resolving this matter without the need for further litigation.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Findings of Fact and Orders issued on September 2, 2020, be **RESCINDED**.

**IT IS FURTHER ORDERED** that the Compromise and Release filed March 7, 2022, be **APPROVED**.

**AWARD IS MADE** in favor of **MICHAEL SAMARAS** against **ZURICH NORTH AMERICA** as specified in the Compromise and Release.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**



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

**March 14, 2022**

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

**MICHAEL SAMARAS  
LAW FIRM OF ROWEN, GURVEY & WIN  
LAW OFFICES OF RICHARD VILLASENOR**

**DH/ara**

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