

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

**IRMA FLORES, *Applicant***

**vs.**

**ANTHONY INTERNATIONAL; LIBERTY MUTUAL INSURANCE COMPANY,  
*Defendants***

**Adjudication Number: ADJ9880759  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A) issued on June 16, 2023, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as a customer service employee during the period January 1, 1997 through February 14, 2014, applicant sustained injury arising out of and in the course of employment to her neck, low back, bilateral hands and wrists, bilateral knees, right shoulder, head, and GI system; (2) applicant did not sustain injury to her bilateral elbows, mid back, left shoulder, psyche, or in the form of sleep disturbance; (3) defendant's workers' compensation carrier was Liberty Mutual Insurance Company; (4) applicant's average weekly wage was \$709.50 per week, warranting a rate of \$473.00 per week for temporary disability and \$290.00 per week for permanent disability; (5) the injury caused temporary disability for the period March 3, 2014 through March 3, 2016, payable at the rate of \$473.00 per week, less credit for reimbursement to the EDD; (6) the injury became permanent and stationary on March 4, 2016; (7) the injury caused permanent disability of 56 percent, equating to 319.25 weeks of indemnity, payable at the rate of \$290.00 per week, commencing March 4, 2016, for a total of \$92,582.50; (8) defendant did not meet its burden of proof on the issue of apportionment; (9) the injury caused a need for future medical care; and (10) the value of applicant's hearing representative's services is assessed at 12 percent of the permanent disability set forth above.

The WCJ awarded applicant temporary disability benefits as provided in finding 5, permanent disability benefits as provided in finding 7, future medical care as provided in finding 9, and attorney's fees as provided in finding 10.

Defendant contends that the WCJ found that defendant caused applicant temporary disability for the period March 3, 2014 through March 3, 2016 payable at the rate of \$473.00 per week less credit for reimbursement to the EDD and awarded temporary disability benefits based thereon as a result of clerical error.

We did not receive an Answer.

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

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will deny the Petition.

#### **FACTUAL BACKGROUND**

On January 17, 2018, a form document entitled Stipulation and Award and/or Order was entered into EAMS. (EAMS No. 65939836, [Undated] Order Allowing Lien.) In it, the parties stipulated as follows:

Parties agree that Defendant will pay \$24,596 --- for 52 weeks of TTD less 15% as attorney fees, less \$500 to applicant attorney for loan to the applicant.

Parties agree that any and all claims of Retro – TTD/TD are solved.

Payment to be issued w/in 30 days.

*(Id.)*

Below the language setting forth the parties' stipulation, a box next to the words "IT IS SO ORDERED/AWARDED" is marked with an "X" and handwriting appearing to be the WCJ's signature appears next to it. *(Id.)*

On March 24, 2023, the parties filed a pre-trial conference statement. (Pre-Trial Conference Statement, March 24, 2023.) In it, the parties stipulated that "EDD LIEN HAS BEEN PAID PER ORDER DATED 1/1/18; APPLICANT HAS BEEN PAID 2 YEARS OF TTD PER STIP/ORDER DATED []." *(Id., p. 2.)*

The parties did not check the box on the pre-trial conference statement form to identify the issue of temporary disability and handwrote the term "N/A" on the line provided for the parties to state the period of temporary disability claimed, if any. *(Id., p. 3.)*

On May 22, 2023, the parties proceeded to trial of the following issues:

1. AOE/COE, including Labor Code Section 3208.3.
2. Body parts.
3. Permanent disability.
4. Apportionment.
5. Need for medical care.
6. Attorney fees.

(Minutes of Hearing and Summary of Evidence, May 22, 2023, p. 2:20-25.)

At trial, the parties stipulated that the “employer has provided temporary disability at the rate of \$473.00 per week for the period 3/3/14 through 3/3/16 (less reimbursement to EDD).” (*Id.*, p. 2:14-15.)

In the Report, the WCJ states:

The injured employee Applicant is a 57-year-old customer service employee for the Petitioner who suffered injuries by way of cumulative trauma ending 2/14/2014.

...

The issue of temporary disability was not listed as an issue in controversy since the parties stipulated to the rate and period of temporary disability paid.

Petitioner asks that the finding of fact of temporary disability be stricken from the Findings and Award since the issue was not listed as an issue for decision.

...

The parties prepared a Pre-trial conference statement at an MSC (EAMS # 45604676). Under item 7 they indicated that 2 years of temporary disability had been paid.

The case was tried by the undersigned on 5/22/2023 at which time the parties and the WCJ prepared the Stipulations and Issues to be tried (Min/Hrg, 5/22/2023, EAMS # 76764456).

As a result of the above, the parties agreed that Applicant herein was temporarily disabled for the period 3/3/2014 through 3/3/2016 paid at the rate of \$473.00 per week (Min/Hrg, 5/22/2023, p.2). The parties also stipulated that the correct compensation rate for temporary disability was \$473.00 per week.

Hence there was no issue of temporary disability to be tried.

Trial was conducted on 5/22/2023. A Findings and Award was issued by the undersigned on 6/16/2023 finding (among other issues) that Applicant was temporarily disabled for the period 3/3/2014 through 3/3/2016 payable at the rate of \$473.00 per week (see Findings and Award, 6/16/2023, p. 2).

Hence this finding of fact is precisely the stipulated period and rate of temporary disability put forth by the parties.

...

Petitioner's sole reason for asking that the findings of fact on temporary disability be deleted is that the issue was not specifically listed as an issue to be determined. And, indeed, in the Minutes of Hearing the issue is not listed since the parties stipulated to the issue. For that matter the WCJ did not list "earnings" as an issue or "P&S date" as an issue as well. Nonetheless the undersigned included findings of fact on those issues as well because there was no issue.

Cal. Code of Regs. sec. 10835 states:

"Findings, awards, and orders may be based upon stipulations of parties in open court or upon written stipulation signed by the parties."

Hence the undersigned issued a complete Findings and Award based not only on the issues in controversy, but also based upon the stipulations of the parties as sec. 10835 allows.

...

The findings of fact on temporary disability also produces a final determination of when permanent disability indemnity begins per Cal. Lab. Code sec. 4650(b). Hence such a finding of fact assists the parties in properly paying the benefits awarded.

(Report, pp. 1-3.)

## DISCUSSION

Labor Code 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.)

Parties to workers' compensation cases may resolve an issue or the whole case by stipulation. (§ 5702; Cal. Code Regs, tit. 8 § 10835.) WCAB Rule 10835(a)(2) provides, "Findings, awards and orders may be based upon stipulations of parties in open court or upon written stipulation signed by the parties." (Cal. Code Regs., tit. 8 § 10835(a).)

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 [92 Cal. Rptr. 2d 290, 65 Cal.Comp.Cases 1].) As defined 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" 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 [88 Cal. Rptr. 202, 471 P.2d 1002, 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 [214 Cal. Rptr. 765, 50 Cal.Comp.Cases 311] (writ den.).)

In this case, defendant argues that the WCJ found that defendant caused applicant temporary disability for the period March 3, 2014 through March 3, 2016 payable at the rate of \$473.00 per week less credit for reimbursement to the EDD and awarded temporary disability benefits based thereon as a result of clerical error.

Here, the record reveals that on or about January 17, 2018, the parties entered into a Stipulation and Award and/or Order wherein they agreed to resolve all of applicant's temporary disability claims—and the stipulation was accepted by the court. (EAMS No. 65939836, [Undated] Order Allowing Lien.) On March 24, 2023, the parties filed a pre-trial conference statement stipulating that applicant had been paid two years of temporary disability benefits in accordance with the Stipulation and Award and/or Order. (Pre-Trial Conference Statement, March 24, 2023. pp. 2-3.) At trial, the parties stipulated that the "employer has provided temporary disability at the rate of \$473.00 per week for the period 3/3/14 through 3/3/16 (less reimbursement to EDD)." (Minutes of Hearing and Summary of Evidence, May 22, 2023, p. 2:14-15.) Based upon these stipulations, the WCJ issued findings not only as to the issues in controversy but the stipulated matters. (Report, pp. 2-3.)

It is thus clear that the findings and award pertaining to the issue of temporary disability is based upon the parties' stipulations, and defendant may not withdraw from those stipulations without demonstrating good cause therefor. However, defendant has not alleged that it entered into the stipulations based upon mutual mistake of fact, duress, fraud, undue influence, or procedural irregularities, but argues instead that the WCJ issued the findings and award

memorializing the stipulations as a result of clerical error. Therefore, we are unable to discern merit to the Petition. Accordingly, we will deny reconsideration.

Having determined that defendant has not alleged grounds for reconsideration, we note that the stipulations memorialized by the F&A explicitly state that defendant has met its obligations to provide the temporary disability benefits to which the WCJ found applicant entitled, and we do not read the F&A as denying defendant credit for the temporary disability benefits it previously paid applicant or reimbursed the EDD.

Accordingly, we will deny the Petition.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration of the Findings and Award issued on June 16, 2023 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**AUGUST 29, 2023**

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

**IRMA FLORES  
EQUITABLE LAW FIRM  
LOWER & KESNER**

**SRO/cs**

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