

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

CESAR OCEJA, *Applicant*

vs.

**EXPRESS EMPLOYMENT;
SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ13602604; ADJ13602605
Anaheim District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.¹ We now issue our Opinion and Decision After Reconsideration.

Applicant, acting in pro per,² seeks reconsideration of the Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ) on December 8, 2020.

Applicant contends that he attempted to withdraw from the settlement agreement after he signed it, but before approval by the WCJ, and that the WCJ should set aside the Order approving it.

We received an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of applicant's Petition, the answer, and the contents of the WCJ's Report with respect thereto.

Based on our review of the record and for the reasons discussed below, we will vacate our June 8, 2021 Order granting applicant's petition for reconsideration, dismiss applicant's Petition

¹ Commissioner Dodd, who previously served as a panelist in this matter is unavailable to participate further. Another panel member was assigned in her place.

² Applicant filed a Notice of Dismissal of Attorney on April 7, 2021.

as premature, and return this matter to the trial level for consideration of the Petition as one to set aside the OACR.

BACKGROUND

Applicant claimed injury to various body parts while employed by defendant as a laborer during the period from August 3, 2019 to August 3, 2020.

On November 17, 2020, applicant and his attorney signed the C&R.

On November 20, 2020, attorney for defendant signed the C&R.

On November 23, 2020, defendant submitted the C&R to the WCJ for approval by way of a letter. Defendant also submitted what appears to be a treating doctor's report from Dr. Atul Bembi at West Point Medical Center for one day of treatment on August 3, 2020.

On December 3, 2020, without holding a hearing,³ the WCJ issued the OACR, which states as follows:

The parties have filed a Compromise and Release in the above-entitled action together with a minimal medical record, which is admitted into evidence, and have waived the provisions of Labor Code §5313.

Applicant has been advised and understands that the existing record is not sufficient to determine whether the settlement is adequate; nevertheless, applicant insists on settlement without further medical evaluation or litigation.

The court has considered the release of applicant's dependents' rights to death benefits in determining the adequacy of the Compromise and Release. Sumner v. WCAB, 48 CCC 369.

Now therefore, IT IS ORDERED that said Compromise and Release is approved, EXCEPT that the attempted settlement of supplemental job displacement benefits is not approved (see Labor Code §4658.7(g); the parties cannot assert that a serious good faith dispute exists regarding injury AOE/COE while simultaneously admitting injury).

AWARD is made in favor of CESAR OCEJA and against AMERICAN HOME ASSURANCE COMPANY c/o SEDGWICK CLAIMS MANAGEMENT SERVICES in the sum of \$27,500, less

³ According to the record in the Electronic Adjudication Management System (EAMS), the application for adjudication was filed on September 16, 2020, *after* the most recent medical report. There is nothing in the record to indicate whether a qualified medical examiner (QME) panel was requested.

the sum of \$4,125 payable to PARKER LAW as reasonable attorneys' fees, leaving a balance payable to applicant of \$23,375.

The Board retains jurisdiction over liens filed to date and penalties and interest thereon.

(December 3, 2020 OACR, p. 1.)

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.”⁴ (Lab. Code, § 5803.)⁵

We observe that contract principles apply to settlements of workers' compensation disputes. Stipulations between the parties must be interpreted to give effect to the mutual intention of the parties it existed at the time of contracting, so far as the same is ascertainable and lawful. (*County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193]; Civ. Code, § 1636.) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, including an offer of settlement of a disputed claim by one of the parties, and an acceptance by the other. (*Burbank Studios v. Workers' Co. Appeals Bd.* (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. (*Sackett v. Starr* (1949) 95 Cal. App. 2d 128; Civ. Code, § 1550, see *Sieck v. Hall* (1934), 139 Cal. App. 279; Civ. Code, § 1565.)

Here, applicant contends that on November 18, 2020, he advised his attorney's office that he wanted to cancel the settlement agreement. (Declaration of Cesar Ocejia in support of Petition for Reconsideration, dated April 7, 2021 (Ocejia Declaration), p. 1.) If applicant withdrew from the settlement agreement prior to defendant's acceptance on November 20, 2020, it calls into question

⁴ 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; *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118-1121 [65 Cal.Comp.Cases 1]; *Robinson v. Workers' Comp. Appeals Bd. (Robinson)* (1987) 194 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].) However, as recognized in *Weatherall*, the Appeals Board may also, in its discretion, reject factual stipulations and set the matter for hearing and further investigation. (*Weatherall, supra*, at p. 1119; Lab. Code, § 5702.)

⁵ All further statutory references are to the Labor Code unless otherwise stated.

whether a contract was created. Additionally, applicant alleges that he attempted to cancel his acceptance of the settlement, but there is no evidence in the record on that issue.

“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) (eff. Jan. 1, 2020).) Although the WCJ states here that “[a]pplicant has been advised and understands that the existing record is not sufficient to determine whether the settlement is adequate ...,” there is no evidence in the record regarding who advised applicant about the record, nor is there evidence in the record regarding how the WCJ was aware of what applicant knew or understood and what applicant was told with respect to the adequacy of the settlement. Because no hearing was held, the WCJ did not have the opportunity to assess applicant’s understanding of the proposed settlement agreement. Moreover, the parties submitted minimal medical evidence, as noted by the WCJ. Consequently, the record is insufficient, both as to the issue of whether applicant wished to withdraw from his agreement and whether the settlement was adequate.

Thus, the determination of compensability, the existence or extent of permanent impairment, and limitations, if any, resulting from an injury all require a medical evaluation. As an unrepresented employee, applicant would require an evaluation by a QME, as opposed to a treating physician or agreed medical evaluator, to determine compensability, if any, and the existence or extent of permanent impairment. (Lab. Code, §§ 4060-4062.3.)

A WCJ’s decision must be based on admitted evidence and must be supported by substantial evidence (Lab. Code, §§ 5903, 5952 (d); *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (*Garza*) (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]). “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, supra*, at p. 475.) Sections 5701 and 5906 “authorize the WCJ and the Board to obtain additional evidence,

including medical evidence.” (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141 (Appeals Board en banc).)

The WCJ is “charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at pp. 475-476; see Lab. Code, § 5313 and *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22.)

Further, all parties to a workers’ compensation proceeding retain the 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].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.* at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, “the commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at p. 577.) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 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.4th 703, 710 [57 Cal.Comp.Cases 230].)

Accordingly, we vacate our June 8, 2021 Order granting applicant’s Petition for reconsideration, dismiss applicant’s 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 applicant’s Petition as a petition to set aside and set a hearing so applicant can provide evidence in support of his arguments and create a record upon which a decision can be made by the WCJ.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the June 8, 2021 Order Granting Reconsideration by the Workers' Compensation Appeals Board is **VACATED**.

IT IS FURTHER ORDERED, that the Petition for Reconsideration, filed by the applicant on April 9, 2021, is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 9, 2021

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

**CESAR OCEJA, IN PRO PER
PARKER LAW
LLARENA MURDOCK**

JB/abs

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