

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

**FRANCISCO AGUIRRE, *Applicant***

**vs.**

**NORTH COUNTIES DRYWALL, INC.;  
INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Number: ADJ10298858  
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.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

I CONCUR,

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**September 13, 2021**

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

**FRANCISCO AGUIRRE, IN PRO PER  
D'ANDRE LAW**

**PAG/abs**

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

### INTRODUCTION

1. Applicant's Occupation: Drywall hanger.  
Applicant's Age at Injury: 38.  
Date of Injury: November 5, 2015.  
Parts of Body Injured: Upper extremities and back.  
Manner in Which Injury Occurred: Specific Injury.
2. Identity of Petitioner: Applicant  
Timeliness: The petition was timely filed.  
Verification: The petition was properly verified.
3. Date of Issuance of the Findings of Fact: June 30, 2021.

Petitioner requests reconsideration of the finding that applicant did establish good cause to set aside the order approving the compromise and release.

4. Petitioner's Contention:
  - 1) That applicant met his burden of proof to set aside the order approving compromise and release.

### FACTS

Through his attorney of record, applicant filed an Application for Adjudication of Claim for the date of injury November 5, 2015 on February 16, 2016. The claim was amended on May 19, 2016 to add an additional body part noted in the Doctor's First Report of Injury. Applicant was evaluated by Panel QME Dr. Shaw twice, with the last evaluation occurring on September 12, 2017.

At the December 14, 2017 hearing, the parties agreed to a Compromise and Release in ADJ10298858. The settlement indicated that applicant received \$109,976.66 in temporary disability from November 9, 2015 through October 25, 2017; \$1,740.00 in permanent disability advances; and \$33,036.27 in medical treatment. The Compromise and Release was for \$49,500.00, less permanent disability advances and less the attorney fee. Judge Cleveland approved the Compromise and Release at the hearing.

On July 31, 2020, applicant filed a Petition to Reopen stating that he wanted to reopen the case because he was still in pain and that he didn't go in to speak with the judge because of perceived death threats from the employer (Petition to Reopen, dated July 29, 2020 and filed on July 31, 2020). Applicant's petition was erroneously entered into EAMS as a Petition for Reconsideration. Judge Cleveland correctly recommended that the Petition for Reconsideration be

dismissed and the matter returned to the trial level for a hearing on applicant's request to have the Order approving Compromise and Release set aside (Report and Recommendation of Petition for Reconsideration, dated August 18, 2020). On October 14, 2020, the WCAB agreed, dismissed the Petition for Reconsideration and the matter was returned to the trial level (Opinion and Order Dismissing Petition for Reconsideration, dated October 14, 2020).

A hearing was held on December 3, 2020 and continued to March 5, 2021. In the meantime, Ratto Law requested to withdraw as the attorney of record for applicant, which was granted by Judge Cleveland on February 3, 2021.

On March 5, 2021, the parties completed the Pre-Trial Conference Statement and the case was set for trial on applicant's request to set the Compromise and Release aside.

The case came to trial on May 14, 2012. The stipulations and issues were read into the record, exhibits were received into evidence and applicant provided testimony.

Applicant testified that he believed there were a lot of irregularities with the settlement and that he had received lots of death threats (Summary of Evidence, May 14, 2021, at page 3, lines 7-8). On cross examination, applicant admitted that the settlement had been explained to him before he signed it (Summary of Evidence, at page 4, lines 15- 16). Applicant testified that threats were made before he filled his workers' compensation claim (Summary of Evidence, at page 4, lines 23-25), but also testified that in mid-2017 a co-worker had mentioned that the owner had a lot of money and could have him killed (Summary of Evidence, at page 5, lines 3-6).

On June 30, 2021, the subject Findings of Fact and Order issued. The undersigned found that applicant failed to establish good cause to set aside the order approving compromise and release and denied applicant's petition to set aside the order approving.

Applicant filed his timely and verified Petition for Reconsideration on July 15, 2021. As of July 26, 2021, defendant has not filed an answer.

## DISCUSSION

Applicant filed his Petition to Reopen within 5 years from the date of injury, but approximately 2½ years after the issuance of the Order approving Compromise and Release. Therefore, the Order Approving Compromise and Release became final.

It is well-settled that a request to set aside an Order Approving Compromise and Release after it has become final will not be granted, absent a showing of good cause. Such a showing must generally consist of the existence of fraud, mutual mistake of fact, duress or undue influence. (See *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160 [50 Cal.Comp.Cases 311]; *Carmichael v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 311 [30 Cal.Comp.Cases 169]; *Silva v. Industrial Acc. Com.* (1924) 68 Cal. App. 510 [11 IAC 266]. See also *City of Beverly Hills v. Workers' Comp. Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691 (writ denied); *Bullocks, Inc. v. Industrial Acc. Com.* (1951) 16 Cal.Comp.Cases 253 (writ denied); *Pac. Indem. Co. v. Industrial Acc. Com. (Forrest)* (1946) 11 Cal.Comp.Cases 117 (writ denied).)

On appeal, applicant repeats his allegations against the employer regarding what he perceives as irregular business practices, noting that he had reported these to the San Francisco Fire Department as well as the City of San Francisco (Petition for Reconsideration, at page 2). Applicant also argues that there are additional witnesses that he would like to testify (Petition for Reconsideration, at page 2). However, what is missing from the appeal is any specific reference to the record that would support a claim that he was under duress or that there was undue influence with regard to entering the compromise and release settlement.

On this record, the undersigned found that there was insufficient evidence to establishing good cause to set aside the Compromise and Release. There is no evidence that applicant was threatened in relation to entering or signing the settlement document. It is also noted that applicant was represented at the time of settlement and applicant had the settlement explained to him before signing it (Summary of Evidence, May 14, 2021, at page 3, lines 8-10 and page 4, lines 14-16). Regarding additional witnesses, applicant testified that he could have called a lot of witnesses at trial, but they didn't want to lose their jobs (Summary of Evidence, May 14, 2021, at page 5, lines 10-11).

Nothing in applicant's Petition for Reconsideration has caused the undersigned to change the finding made on June 30, 2021 that applicant failed in his burden of proof to establish good cause to set aside the order approving compromise and release.

#### RECOMMENDATION

It is respectfully recommended that applicant's Petition for Reconsideration be denied.

July 27, 2021

NOAH W. TEMPKIN  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE