

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

FREDDIE DAYAP, *Applicant*

vs.

**HUMANGOOD REGENTS POINTS; ACE INSURANCE, administered by SEDGWICK
CMS, *Defendants***

**Adjudication Number: ADJ11198140
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of the December 22, 2020 Findings and Order (“F&O”), wherein the workers’ compensation administrative law judge (WCJ) denied defendant’s petition pursuant to Labor Code section 5803¹ to amend the date of injury on the Compromise and Release (“C&R”) filed by the parties, or, alternatively, to set aside that C&R, based upon mutual mistake of fact.

We did not receive an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, and the contents of the Report. For the reasons expressed below, we will deny the Petition for Reconsideration.

FACTUAL BACKGROUND

Applicant originally filed two Applications for Adjudication, Case Nos. ADJ11198139 and ADJ11198140, for injuries sustained while employed by defendant as a dishwasher. In Case No. ADJ11198139, applicant alleged a specific injury to the shoulders sustained on August 20, 2017; this claim was later amended to include injuries to the neck, back, right hand, and right fingers. In Case No. ADJ11198140, applicant alleged a cumulative trauma injury to the shoulders, arms,

¹ Further references are to the Labor Code unless otherwise stated.

hands, forearms, and elbows from January 8, 2015 to January 8, 2017; this claim was later amended to include a back injury.

On January 13, 2020, at the Mandatory Settlement Conference, the parties appeared in order to obtain an Order Approving Compromise and Release. The C&R was dated December 25, 2019, and settled both of applicant's cases for the total sum of \$50,000. The C&R consists of nine pages, hand-numbered on the bottom of each page. No Addendum is included. The dates of the cumulative trauma injury are listed as January 8, 2015 to January 8, 2017, matching both the Application for Adjudication and the supporting Qualified Medical Examiner (QME) report of Neil J. Haldbridge, M.D. The WCJ approved the C&R.

On March 30, 2020, applicant filed a new Application for Adjudication, Case No. ADJ13094492, in the Van Nuys District Office, alleging a further cumulative trauma injury sustained while employed by defendant from January 8, 2017 to January 8, 2018, to the shoulders, back, neck, and nervous system.²

On August 14, 2020, in the Anaheim District Office under the original two case numbers, defendant filed a document titled "Petition to have WCAB and Judge Amend Joint Compromise and Release Agreement for Good Cause. In the Alternate, Petition to have WCAB and Judge Set Aside Joint Compromise and Release with the Disgorgement of Paid Sums and Funds; California Labor Code section 5803." (Emphasis original, hereafter "Petition to Amend".) The filing is unverified, in violation of WCAB Rule 10510. (Cal. Code Regs., tit. 8, § 10510.)

The Petition to Amend states that "there was a clerical error as to the date of injuries in paragraph one [of the C&R] intended by the parties and an addendum to the Compromise and Release of the Anaheim cases which evidences the fact that the correct date of injury is the same or overlapping to that filed at Van Nuys WCAB." (Petition to Amend, at p. 3.) The Petition alleges that good cause existed to amend the C&R "due to the surprise filing of the Van Nuys ADJ11199140 [*sic*] creating the need for relief requested," noting that the period to seek reconsideration of the C&R had passed before applicant's third case was filed. (*Id.* at p. 3.)

Included with the Petition to Amend is a document titled "Addendum 'A'." (Ex. C.) The document is dated December 25, 2019, the same date as the C&R, and hand-numbered page numbers at the bottom of each page sequentially match those on the C&R, and appear to be in the

² On January 21, 2021, subsequent to the filing of this Petition for Reconsideration, venue in this third case was changed to the Anaheim district office.

same handwriting. It appears to be signed by applicant and applicant's attorney, but not by defendant. As relevant here, the document states: "By executing this C&R, applicant stipulates and agrees to not make further claims of injury within the jurisdiction of the WCAB against HUMANGOOD REGENTS POINT (herein "Employer"), or any other named company due to merger, including but not limited to any known or unknown specific injuries or injuries via cumulative trauma to date." (*Id.* at p. 1.) Elsewhere in the document it also states: "In exchange for the promises contained in this Agreement, Employee agrees that he . . . releases Employer . . . from any and all claims Employee has against them for this workers' compensation claim and any other claim for workers' compensation against Employer to date." (*Id.* at p. 2.)

The matter ultimately proceeded to trial on December 10, 2020. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 12/10/2020.) According to the MOH/SOE, the parties stipulated at trial that "Freddy [*sic*] Dayap, born September 24, 1958, while employed during the period January 8th, 2017 through January 8th, 2018, as a dishwasher, occupational group number 322, at Irvine, California, by Humangood Regents Point [*sic*], claims to have sustained injury arising out of and in the course of employment to neck, right hand, back, bilateral shoulders and right fingers." (MOH/SOE, at p. 2.) The WCJ admitted documentary evidence including the C&R, the Order Approving Joint Compromise and Release, and the QME reports, and the matter was submitted for decision without witness testimony. (*Id.* at pp. 3–4.) Defendant filed a trial brief in no less than three volumes, though it is unclear from the record whether it sought permission to do so, and the Report indicates that the WCJ did not authorize such filing. (See Report, at p. 6.)

The WCJ issued his F&O on December 22, 2020, finding no good cause to amend the C&R or grant defendant other relief. (F&O, at pp. 1–2.) The Opinion on Decision makes clear that the WCJ denied relief both because defendant failed to verify its Petition to Amend, and on the merits. (F&O, at pp. 5–6.)

This Petition for Reconsideration followed.

DISCUSSION

Initially, we address defendant's failure to verify its Petition to Amend. Pursuant to Rule 10510, failure to verify a petition is grounds for its summary dismissal. (Cal. Code Regs., tit. 8, § 10510(c)). Moreover, defendant's explanation is deficient as to why it failed to comply with

Rule 10510 – that the failure was “due to the unintended in advantage [*sic*] and due to a member of office staff being stricken by Covid.” Nevertheless, we will overlook the procedural deficiency and reach the merits of the issue, because we believe a ruling on the merits will be of benefit to both parties.

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 [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” to set aside or amend an order or stipulation depends upon the facts and circumstances of each case. “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 [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 [50 Cal.Comp.Cases 311] (writ den.)) To determine whether there is good cause to amend and/or rescind a stipulation, the circumstances surrounding its execution and approval must be assessed. (See § 5702; *Weatherall, supra*, 77 Cal.App.4th at pp. 1118-1121; *Robinson v. Workers’ Comp. Appeals Bd.* (1987) 199 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers’ Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].) When “there is no mistake but merely a lack of full knowledge of the facts, which . . . is due to the failure of a party to exercise due diligence to ascertain them, there is no proper ground for relief.” (*Huston, supra*, 95 Cal.App.3d at 866, quoting *Harris v. Spinali Auto Sales, Inc.* (1966) 240 Cal.App.2d 447.)

The parties must clearly identify each injury and list the corresponding body parts and injury period in Paragraph One of the C&R form document, because that section requires that the parties state “with specificity the date(s) of injury(ies) and what part(s) of body, conditions or systems are being settled.” (C&R, ¶ 1, p. 3.)

As the party seeking to amend the C&R, defendant bears the burden of proof. (§ 5705.) Here, however, defendant has failed to clearly articulate why it believes it is entitled to relief, or to provide evidence showing such an entitlement. For example, although the inclusion of the document entitled “Addendum ‘A’” with defendant’s Petition to Amend presumably implies that defendant believes the parties intended the Addendum to be part of the C&R, no such facts are alleged or proven. We cannot simply assume from the existence of Addendum “A” that it was intended by the parties to be included in the C&R; there are any number of reasons why the parties might have drafted such a document only to ultimately decide against its inclusion. Moreover, even if defendant had established that Addendum “A” was intended to be included in the C&R, it has failed to establish either (1) why and how it did not make it into the C&R, or (2) why defendant did not raise the issue until after the period to seek reconsideration had passed. As a party to the litigation, defendant should have reviewed the C&R after the WCJ approved it, and, if it was concerned that a portion of the C&R was missing, should have promptly raised that issue, whether or not applicant had another case pending at that time that could be impacted by it.

Rather than provide any of the above information, defendant focuses upon a stipulation in the MOH/SOE for the December 2020 trial, quoted above, which states that applicant alleges an injury “while employed during the period January 8th, 2017 through January 8th, 2018 . . . to neck, right hand, back, bilateral shoulders and right fingers.” (MOH/SOE, at p. 2.) Defendant argues that this stipulation is in effect an admission by applicant that applicant’s original cumulative injury claim extended through 2018. (See Petition for Reconsideration, at p. 2.) However, the body parts listed in the stipulation do not match those claimed in the cumulative trauma injury, Case No. ADJ11198140, and instead correspond to the body parts claimed in the specific injury, Case No. ADJ11198139. Moreover, because the parties had already stipulated in the C&R that applicant *did* sustain a cumulative trauma injury, the reference to an alleged injury only makes sense in reference to applicant’s new claim, Case No. ADJ13094492 – which matches the January 8, 2017 to January 8, 2018 injury period recited, although not the body parts listed. As best as we can tell, it appears that the parties and/or the WCJ erroneously conflated facts from several of applicant’s claims, but that this stipulation was intended to reference applicant’s newest case, and therefore to set the stage for why the parties were now disputing the nature of the original C&R. In any case, the stipulation does not constitute an admission by applicant that the injury period in

the C&R should be amended to run through January 2018, a result that would squarely contradict the QME's medical report upon which the settlement was premised.

Finally, we note that even if defendant had provided evidence establishing that the parties intended Addendum "A" to be included in the C&R, and shown good cause why it did not realize that Addendum "A" had not been included in the C&R until after the period to seek reconsideration had lapsed, Paragraph Three of the C&R states: "This agreement is limited to the settlement of the body parts, conditions, or systems and *for the dates of injury* set forth in Paragraph No. 1 and further explained in Paragraph No. 9 *despite any language to the contrary elsewhere in this document or any addendum.*" (C&R at ¶ 3, p. 5, emphasis added.) Accordingly, even if Addendum "A" had been included in the C&R, it could not operate to modify the date of injury listed in Paragraph One or to otherwise constitute a general settlement of any injuries not listed in that paragraph.

For all these reasons, the WCJ properly denied the Petition to Amend, and we will deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the December 22, 2020 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 22, 2021

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

**FREDDIE DAYAP
SHATFORD LAW
ZGS LAW**

AW/bea

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