

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

GERALD PHIPPS, *Applicant*

vs.

**PEPSICO/FRITO-LAY, INC.; ACE AMERICAN INSURANCE COMPANY,
*Administered by SEDGWICK CMS, Defendants***

**Adjudication Numbers: ADJ9323388, ADJ9392268
Santa Rosa 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.

I.

Applicant, Gerald Phipps, and defendant, ACE American Insurance Company, each petition for reconsideration of the Findings and Award issued by the workers' compensation administrative law judge (WCJ) in this matter on May 6, 2020. In that decision, the WCJ found that applicant's injury arising out of and in the course of his employment by Pepsico/Frito-Lay, Inc., on September 21, 2013 (case ADJ9392268) caused permanent partial disability of 98% and need of further medical treatment.

Applicant contends in his petition for reconsideration that the WCJ erred in not finding that applicant's injury caused permanent total disability.

Defendant contends in its petition for reconsideration that the WCJ erred in finding that applicant's injury caused permanent partial disability in excess of 48%.

Each party filed an answer to the opposing party's petition for reconsideration, arguing that the petition should be denied.

The WCJ issued a report in which he recommended that reconsideration be granted only to amend the WCJ's decision to award permanent disability indemnity for permanent partial disability of 99%.

Subsequently, at our request the parties participated in a commissioners' settlement conference and agreed to resolve applicant's claims in both cases ADJ9323388 and ADJ9392268 by compromise and release. The Compromise and Release, which was filed on May 25, 2021, provides for a settlement amount of \$225,432.93, less permanent disability indemnity previously paid of \$107,608.79, less \$21,000 to fund a Medicare set-aside trust, less an attorneys' fee of \$33,814, leaving \$63,010.14 payable to applicant in a lump sum. Defendant also agrees to pay, adjust or litigate liens of record.

II.

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. In addition, we conclude that the attorneys' fee requested is reasonable and should be allowed.

Therefore, we will rescind the Findings and Award issued on May 6, 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 and Award issued on May 6, 2020, be **RESCINDED**.

IT IS FURTHER ORDERED that the Compromise and Release filed May 25, 2021, be **APPROVED**.

AWARD IS MADE in favor of **GERALD PHIPPS** against **ACE AMERICAN INSURANCE COMPANY** as specified in the Compromise and Release.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 4, 2021

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

**GERALD PHIPPS
KARASOFF & ASSOCIATES
MARK WEINBERGER ATTORNEY AT LAW**

DH/ara

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