

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

FRANK TOWE, *Applicant*

vs.

**STUDEBAKER SERVICES AUTO BODY; FARMERS INSURANCE GROUP/
MID-CENTURY INSURANCE; STATE COMPENSATION INSURANCE FUND,
*Defendants***

**Adjudication Numbers: ADJ2515690 (VNO 0429947); ADJ497686 (VNO 0429946);
ADJ518952 (VNO 0429948)
Van Nuys 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.

Defendant, Farmers Insurance Group/Mid-Century Insurance Company (Farmers) petitioned for reconsideration of the Findings, Award and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on August 27, 2021. In that decision, the WCJ found that applicant, Frank Towe, sustained injuries to his neck, low back, upper extremities, psyche, shoulders, legs, clavicle, and head arising out of and in the course of the employment as an auto body prep man on May 23, 1995, and January 7, 1999, by defendant, Studebaker Services Auto Body, causing permanent total disability and need of further medical treatment. The WCJ awarded benefits against Farmers and defendant, State Compensation Insurance Fund (SCIF), both of which insured the employer for workers' compensation liability during certain periods. The WCJ ordered Farmers to administer the award and reserved jurisdiction to enforce Farmers' right to contribution from SCIF for 50% of the benefits paid.

Farmers contends in its petition for reconsideration that the WCJ erred in finding that applicant's injuries caused permanent total disability.

The WCJ issued a report in which he recommended that the petition for reconsideration be denied.

Subsequently, at our request the parties participated in a commissioners' settlement conference and agreed to resolve this matter by Compromise and Release.

The Compromise and Release was filed on March 11, 2022. It provides for a total settlement of \$675,000 less \$123,602 to fund a self-administered Medicare set aside trust and less an attorneys' fee of \$94,460, leaving \$456,938 payable to applicant in a lump sum. The Compromise and Release also provides that defendants waive credit rights totaling \$123,573.44 for permanent disability indemnity paid and a third party recovery to applicant. Farmers and SCIF agreed that the former would contribute \$325,000 and the latter \$350,000 to the total settlement amount. In addition, defendants agreed 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. We also conclude that the attorneys' fee requested is reasonable and should be allowed. In addition, we conclude that Addendum G of the Compromise and Release, “Characterization of Settlement Proceeds,” is justified by the record.

Therefore, we will rescind the Findings, Award and Order issued by WCJ on August 27, 2021, 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, Award and Order issued on August 27, 2021, be **RESCINDED**.

IT IS FURTHER ORDERED that the Compromise and Release filed March 11, 2022, be **APPROVED**.

AWARD IS MADE in favor of **FRANK TOWE** against **FARMERS INSURANCE GROUP/MID-CENTURY INSURANCE COMPANY** and the **STATE COMPENSATION INSURANCE FUND**, as specified in the Compromise and Release.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 16, 2022

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

**FRANK TOWE
HITZKE & FERRAN
LAW OFFICES OF MICHAEL P. BARNARD
STATE COMPENSATION INSURANCE FUND**

DH/ara

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