

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

**NESTOR VILLA *Applicant***

**vs.**

**V.S. MANAGEMENT FIRM, INC. DBA LOVING CARE FACILITY FOR THE  
ELDERLY; BENCHMARK INSURANCE administered by BENCHMARK  
ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ15017008  
Van Nuys District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Applicant, in pro per, seeks reconsideration of the June 17, 2022, Order Approving Compromise and Release (OACR), wherein the workers' compensation law judge (WCJ) approved of the parties' settlement agreement. Applicant requests that the OACR be set aside.

We have not received an answer from any party. 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, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss applicant's Petition as premature and return this matter to the trial level for consideration of the Petition as one to set aside the OACR.

**FACTS**

Applicant claimed industrial injury to his back, spine, bilateral shoulders, and bilateral extremities on June 22, 2021, while employed by defendant as a caregiver. (C&R, p. 3.)

The parties signed the C&R and agreed to a settlement amount of \$24,750 with a deduction of \$3,712.50 in attorney's fees. (C&R, pp. 5-6.) According to the defendant's counsel, there were no liens. (C&R, p. 10.)

The WCJ issued the OACR approving the C&R, without holding a hearing,<sup>1</sup> on June 17, 2022. The WCJ approved the settlement amount as well as the applicant's attorney's fees. (OACR, p. 1.)

## DISCUSSION

Applicant contends that on September 24, 2021, the insurance company accepted liability for his back injury; that on November 11, 2021, he saw Dr. Mahboubian who said that he was totally partially disabled and in need of treatment; and that he signed the C&R on December 20, 2021, without receiving further evaluation from Dr. Mahboubian. He further contends that on June 7, 2022, he contacted his attorney to request that the attorney delete a certain entry on the settlement agreement about him stipulating that he was not entitled to a supplemental job displacement benefit (SJDB) voucher, as there was no finding of permanent disability. He was informed by his attorney's office that they would contact the defense attorney about it but he was later informed that the settlement that was filed with the court on the same day "did not have the entry" that he wanted to be deleted. Applicant also contends that the OACR indicated that there is an issue about his back injury not being related to the work he did for defendant. (Petition, p. 1.)

"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).) 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], citing Civ. Code, § 1636.)

Additionally, there must be a complete record for our review of the case. "[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Bd. en banc).) The

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<sup>1</sup> Based on a review of the record, no Minutes of Hearing or Summary of Evidence (MOH/SOE) were filed.

Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.)

Furthermore, all parties in workers' compensation proceedings retain their 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] (*Rucker*)). 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. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].)

Because no hearing was held, the WCJ did not have the opportunity to assess the basis of the parties' understanding of the C&R. There is no Minutes of Hearing/Statement of Evidence in the record. Therefore, we cannot make a decision without giving the parties an opportunity to be heard and for the WCJ to create a complete record for our review.

Accordingly, we will dismiss the Petition as premature, and return this matter to the trial level. Upon return of this matter to the trial level, we recommend that the WCJ treat the Petition as a petition to set aside and set a hearing so applicant can provide evidence in support of the arguments contained in the Petition and create a record upon which a decision can be made by the WCJ.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the June 17, 2022, OACR is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**September 6, 2022**

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

**NESTOR VILLA  
ROSSI LAW**

**JMR/pc**

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