

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

BEVERLY TAYLOR, *Applicant*

vs.

**STATE COMPENSATION INSURANCE FUND,
*Legally uninsured, Defendants***

**Adjudication Number: ADJ3602194 (LAO0722538)
Marina Del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
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 grant reconsideration, amend Finding number 6 and Order number 1, and otherwise affirm the findings and order. The Appeals Board may correct clerical errors at any time. (*Toccalino v. Worker's Comp. Appeals Bd.* (1982) 128 Cal.App.3d 543, 558 [47 Cal.Comp.Cases 145].)

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of August 23, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of August 23, 2023 is **AMENDED** as follows:

FINDINGS OF FACT

6. The Compromise and Release of May 8, 1997, was not entered into by fraud, and thus, the Compromise and Release shall not be vacated.

ORDERS

1. Due to the Finding that the Compromise and Release of May 8, 1997, was not entered into by fraud, the applicant TAKES NOTHING additional and the proceeds from the Compromise and Release remain as a credit against restitution, and not payment in full.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 2, 2023

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

**BEVERLY TAYLOR (PRO PER)
GOLDMAN, MAGALIN & KRIKES**

LN/pm

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**

I.
INTRODUCTION

- | | |
|----------------------------------|--|
| 1. Applicant's Occupation: | Claims Adjuster/ Representative |
| Applicant's Age: | 41 |
| Date of Injury: | May 13, 1993 |
| Parts of Body Injured: | Neck, Shoulder and Back |
| Manner in which injury occurred: | Auto accident |
| 2. Identity of Petitioner: | <u>Applicant</u> filed the Petition |
| Timeliness: | The petition was timely. |
| Verification: | The petition was verified. |

Defendant did not file an Answer.

3. Date of Findings & Order: July 12, 2023
4. Petitioner contends that: 1.) the findings of fact do not support the orders, 2.) the evidence does not justify the findings of fact, 3.) the judge exceeded his authority by adding language to the C&R, in his Findings/Order, 4.) Judge Smith allowed questioning, by the defense, that were not part of this trial, and 5.) he (WCJ) exceeded his authority, and used my being in pro per to give defense leverage, to have the defense given such brevity, is disconcerting.

II.
PROCEDURAL

Applicant, Beverly Taylor [...] while employed on May 13, 1993 as a claims adjuster/ representative at State Compensation Insurance Fund, legally uninsured, was involved in a motor vehicle accident and sustained injury to her neck, shoulder and back.

On May 8, 1997, the parties entered into a Compromise and Release in the amount of \$15,000.00.

The matter proceeded to Trial on September 27, 2022, January 18, 2023 and May 24, 2023. The primary issue was whether the Compromise Settled the \$25,150.00 Superior Court Restitution Order or whether the \$15,000.00 Compromise and Release acted as a credit against the \$25,150.00.

Findings and Order issued on July 11, 2023. (Findings and Order, 7/11/23, EAMS # 76927852)

Applicant filed a Petition for Reconsideration dated July 25, 2023 on August 7, 2023. (Petition for Reconsideration, 7/25/23, EAMS # 77019504)

III. **FACTS**

Applicant, Beverly Taylor [...] while employed on May 13, 1993 as a claims adjuster/ representative at State Compensation Insurance Fund, legally uninsured, sustained injury to her neck, shoulder and back. (Minutes of Hearing, 9/27/2022, Page 2, lines 3- 5, EAMS# 76001311).

Applicant testified that on May 13, 1993, she was involved in a motor vehicle accident on her way to a State Compensation Insurance Fund training seminar. She sustained injuries to her neck, shoulder, and back, which was accepted by State Compensation Insurance Fund. (Minutes of Hearing, 9/27/2022, Page 4, lines 22-24, EAMS# 76001311).

On June 7, 1994, she was convicted and sent to prison. She was ordered to pay \$25,150 in restitution, and her codefendant was also ordered to pay \$25,150 in restitution. (Minutes of Hearing, 9/27/2022, Page 5, lines 1-2, EAMS# 76001311).

She obtained the services of Sef Krell to represent her for the workers' compensation settlement. She told Mr. Krell, when he was negotiating the Compromise and Release, that she would not sign over her permanent disability and less State Compensation Insurance Fund would agree to settle the entire amount for restitution. (Minutes of Hearing, 9/27/2022, Page 5, lines 8-9, EAMS# 76001311).

On May 8, 1997, the parties entered into a Compromise and Release in the amount of \$15,000.00. Within Addendum “B”, paragraph 2 of the Compromise and Release indicates:

“Applicant, Beverly J. Taylor, confirms the restitution ordered by the Superior Court of California, Judge Lance Ito, in the amount of Twenty-Five Thousand One Hundred Fifty Dollars (\$25,150.00). Applicant agrees that the whole amount awarded in this C&R, less stated attorney fees, is a credit against the \$25,150.00 and that applicant will receive no further amounts from State Compensation Insurance Fund. Applicant agrees that no further amounts are due.....”

(Compromise and Release, 5/8/1997, Addendum B, EAMS# 7086594)

The applicant testified she had a new job and she could not attend the May 8, 1997 mandatory settlement conference. As she had a new job and could not attend, her attorney, Sef Krell, took the Compromise and Release documents to her at her place of business to sign. He informed her at that time all the restitution was taken care of, and State Compensation Insurance Fund would not pursue any further monies. (Minutes of Hearing, 9/27/2022, Page 5, lines 11-14, EAMS# 76001311).

An Order Approving Compromise and Release was issued on May 8, 1997 by R. VanRiper, Workers’ Compensation Judge. (Compromise & Release, 5/8/1997, EAMS# 20561742)

The Applicant was referred to the 1997 Compromise and Release. She identified her signatures on page 2 of the Compromise and Release, on Addendum A, and on Addendum B. (Minutes of Hearing, 9/27/2022, Page 8, lines 10-11, EAMS# 76001311).

On cross-examination Ms. Taylor testified she is a college-educated person. She is fluent in reading and writing in English. She has prior experience in the insurance industry. She was an insurance underwriter and worked in risk management.

When presented with the Compromise and Release, she had already been convicted of insurance fraud. The (Superior) court issued a restitution order for \$25,150.

On or about 2008, she believed or had an opinion that there was something wrong with the Compromise and Release that she had signed. She believed the Compromise and Release took care of all restitution.

In 2008 she filed a State Bar complaint against Sef Krell and Peter Paul Mendel because she was dissatisfied that there was something wrong with the Compromise and Release.

She was not getting satisfaction so she wrote a letter to Deputy District Attorney of Los Angeles, Steve Cooley, asking him to investigate her December 2009 Restitution Order. She complained that she felt that she did not owe any additional monies regarding the Restitution Order.

She took action due to the dissatisfaction of the settlement documents in 2010 by filing a Declaration of Readiness to Proceed.

After 2010 the matter was taken off calendar. The applicant was asked if she did nothing until filing another Declaration of Readiness to Proceed in 2021. She answered stating she disagreed as the language was not in the Compromise and Release until after she signed it. She did not accept the Compromise and Release.

After 2010 she did not file any paperwork with the Workers' Compensation Appeals Board until March 9, 2021. During those years she did not file any paperwork with the Workers' Compensation Appeals Board to set aside the Compromise and Release. She was not aware that she could do that. (Minutes of Hearing, 9/27/2022, Page 6, line 23 – Page 7, line 16, EAMS# 76001311).

In 2010 to 2011 she became aware of a lien against her residential property. That is why she filed the Declaration of Readiness to Proceed in 2010. (Minutes of Hearing, 9/27/2022, Page 7, line 25 – Page 8, line 1, EAMS# 76001311).

IV. **DISCUSSION**

- 1. Applicant argues the findings of fact do not support the Orders as the Order states the May 8, 2023 C&R will not be set aside. Applicant claims she does not have a 05/08/2023 C&R. She is objecting to this Findings & Order. The Findings and Order should be reconsidered since the Judge wasn't aware of what C&R he was going to not set aside.**

When one refers to the discussion within the Opinion on Decision, it is clear the date of the Compromise and Release which was at issue in this matter is dated May 8, 1997 and the date on the Findings and Order, May 8, 2023, is a clerical error. The Findings and Order, page 2, Paragraph 6 and Paragraph 1 under Orders should be amended with the correct date of Compromise and Release to be May 8, 1997.

- 2. The applicant argues that the Findings of Facts do not support the orders that “the statute of limitations had tolled based on SCIF.”**

It is difficult to understand exactly what the Applicant's contention is as there is no discussion or facts listed within the Petition for Reconsideration. However, it appears the applicant contends that the WCJ cannot use evidence presented by the defendant, SCIF, to make a determination that the statute limitations had tolled. Based upon the facts listed above regarding the Applicant's testimony that she was aware of her contention that the Compromise and Release was inaccurate in 2008 and took action in 2010, but then did nothing until 2021, the WCJ found that the statute limitations to raise the issue of modification of the Compromise & Release had expired.

3. **The applicant argues that the Findings of Facts do not support the orders that “a modification of the Superior Court order wasn’t requested.”**

Issue number 5: “Improper forum for applicants allegations to modification of Order of Restitution.” was raised. The applicant was asking for a modification of that Superior Court order to indicate that the order was fully satisfied. However, that the WCJ found that the Board lacked subject matter jurisdiction to have authority to modify the Superior Court. If the Applicant was not asking for the Superior Court Order to be modified, then there is no issue for reconsideration, and the issue is moot.

4. **The applicant argues that: “evidence that wasn’t admitted, which was substantiate my requests. This evidence was from SCIF. Which stated that the C&R satisfied the restitution.” “Testimony by Peter Paul Mendel confirmed the satisfaction of the restitution based on the C&R. The judge didn’t include that in the Findings of Fact, or the Opinion on Decisions.” “Testimony by both Sef Krell and Peter Paul Mendel, did not specify that the amount was a credit.”**

Again, the WCJ is not exactly sure what the Applicant is arguing as there is no discussion or facts supporting the allegation, within the Petition for Reconsideration. However, it appears the Applicant is arguing that the testimony of Peter Paul Mendel and Sef Krell supported a finding that the C&R settled all restitution and not act as a credit. Here there is a signed Compromise and Release. When evaluating the settlement documents, within the four corners of the document, it is clear that the settlement of the \$15,000, less attorney fee would act only as a credit against the \$25,150 Restitution Order. Thus, there is no need to go outside the document for parole evidence, to understand the terms of the agreement. Additionally, there is a lack of credible evidence to prove that the document is not correct as written.

It is clear that the Applicant wants to have the entire Restitution Order covered by the proceeds of the Compromise and Release. However, there is no corroborating evidence that the parties had a meeting of the minds to settle the entire Restitution Order other than the applicant's self-serving testimony. The testimony of Sef Krell was given little weight as he stated he did not remember the settlement discussions or the agreement as the time between the date of the Compromise and Release and the Trial was very lengthy. He did testify he would not have given the settlement documents to the Applicant without them being completed. Mr. Mendel's testimony also did not support a contrary finding. There is evidence within the four corners of the Compromise Release that the parties intended to use the net proceeds of the settlement as a credit against the restitution.

The WCJ understands the Applicant considers her evidence to prove the agreement was to settle the entire Restitution Order. However, based upon the entirety of the record this WCJ did not find Applicant's testimony credible. Further based on the entire record, including the witness testimony of Peter Paul Mendel and Sef Krell, and the exhibits from both sides and a complete lack of corroborating evidence that the C&R Exhibit B was not complete at the time of signing, it is found the settlement was not procured by fraud and deceit or duress.

It is also found that the applicant was a college-educated person, with prior experience in the insurance industry as an insurance underwriter and worked in risk management and should have understood the agreement. For the reasons discussed the WCJ did not vacate the Compromise and Release dated May 8, 1997.

It is not as applicant contends that the WCJ did not consider the testimony of the witnesses and the documentary evidence presented by the applicant. The WCJ consider all of the evidence in reaching his determination.

5. Applicant contends that: “Judge exceeded his authority by adding language to the C&R, in his findings/order.”

Again, this WCJ does not understand Applicant’s contention. The WCJ does not know what language was added to the Compromise and Release. The WCJ did not add any language to the Compromise and Release that was drafted in 1997.

6. Applicant contends that: “Judge Smith allowed questioning, by the defense, that were not part of this trial. I believe he exceeded his authority, and used my being in Pro Per to give the defense leverage. To have the defense given such brevity, is disconcerting.”

Again, this WCJ does not understand Applicant’s contention. The WCJ gave each side the time they required to present their case, until each side stated they had fully presented their positions. There was no preference given to either party.

V.
RECOMMENDATION

It is respectfully recommended that Applicant’s Petition for Reconsideration be DENIED in it’s entirety.

It is respectfully recommended that the Findings and Order, page 2, Paragraph 6 and Paragraph 1 under Orders should be corrected with the correct date of Compromise and Release to be May 8, 1997.

DATED: 8/22/2023

TERRY L. SMITH
Workers’ Compensation
Administrative Law Judge