

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

**MARIA HERNANDEZ, *Applicant***

**vs.**

**TARGET CORPORATION, permissibly self-insured and  
administered by SEDGWICK, *Defendants***

**Adjudication Numbers: ADJ17765957; ADJ17747468  
Oakland District Office**

**OPINION AND ORDER  
DISMISSING PETITION  
FOR 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 dismiss the petition.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



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

**AUGUST 22, 2023**

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

**MARIA HERNANDEZ  
OCCUPATIONAL INJURY LAW CENTER  
FINNEGAN, MARKS, DESMOND & JONES**

**JB/cs**

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

**REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

- 1. Applicant’s Occupation: Food and Beverage Team Member  
Applicant’s Age 53  
Date of injury: August 18, 2021  
Parts of Body Injured: Shoulder
- 2. Identity of Petitioner: Applicant  
Timeliness: Yes  
Verification: Yes
- 3. Award: June 1, 2023
- 4. Applicant’s Contentions: The Stipulations with Request for Award should be set aside

**II  
DISCUSSION**

The essential facts of this matter are that on June 1, 2023, defendant filed Stipulations with Request for Award, and that later on that same date, I approved the Stipulations. Rather than file a Petition to Set Aside the Settlement, applicant filed a Petition for Reconsideration arguing in essence that while unrepresented, she was presented with a settlement to sign that she could not read as it was in English and she only speaks Spanish. In her Petition, applicant references case number ADJ17747468, which was not part of the Stipulations or consolidated with this matter..

It is well established that, the appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.” (Lab. Code, § 5803.)

Additionally, all parties to a workers’ compensation proceeding retain the 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].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.* at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, “the commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this

cannot be done except after due process of law.” (Id. at p. 577.) 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. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (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 [57 Cal.Comp.Cases 230].)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Further, Labor Code section 5702 states that,

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy. (Lab. Code, § 5702.)

Stipulations are binding on the parties. (*County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) However, if there is a showing of good cause, the parties may be permitted to withdraw from their Stipulations. (*County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) Whether “good cause” exists to set aside a settlement 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.).)

In her Petition for Reconsideration, applicant claims that the settlement was improper because she could not understand it and she also references another injury, and that she should

therefore not be bound by the terms of the Stipulations. However, a hearing has not been held on these claims meaning that no evidence or testimony under oath has been admitted into the record regarding these allegations. Accordingly, the matter is premature for reconsideration because the record of proceedings does not allow a determination regarding applicant's claims.

Based upon the above, I recommend that applicant's Petition be dismissed and that the matter be returned to the district office for consideration of the Petition as one to set aside the Stipulations and development of the record on these issues.

Date: June 26, 2023

*/s/ Alison Howell*

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**Alison Howell**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE