

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

**NASHAA SIOCO, *Applicant***

**vs.**

**AMAZON.COM, INC.;**  
**AMERICAN ZURICH, administered by SEDGWICK CLAIMS MANAGEMENT**  
**SERVICES, *Defendants***

**Adjudication Number: ADJ11986956**  
**Riverside District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Applicant, in pro per, seeks reconsideration of the Order Approving Compromise and Release (OACR) of March 6, 2019. Applicant contends that although she signed the Compromise and Release (C&R) in 2019, she is still injured and believes that she is entitled to more compensation for her injury.

We have not received an Answer from Defendants. The WCJ prepared a Report and Recommendation on Petition for Reconsideration and (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the WCJ with respect thereto. Based on our review of the record, for the reasons discussed below, we will dismiss reconsideration.

**FACTS**

Applicant claimed industrial injury to her shoulder, neck, and back while working for defendant as a warehouse associate on September 23, 2018. (C&R, p. 3.) The parties filed a C&R<sup>1</sup>

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<sup>1</sup> The C&R initially listed \$5,000 as the settlement amount but was amended to \$8,300.00 and the WCJ approved the higher amount.

through a “walk-through” procedure on March 6, 2019, settling the case for \$8,300.00, and the WCJ issued the OACR on March 6, 2019.

## DISCUSSION

### I.

A petition is generally considered denied by operation of law if the Appeals Board does not grant the petition within 60 days after it is filed. (Lab. Code, § 5909.) However, we believe that “it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice...” (*Shipley v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shipley*, the Appeals Board denied the applicant’s petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board’s decision, holding that the time to act on applicant’s petition was tolled during the period that the file was misplaced. (*Id.* at p. 1108.) Like the Court in *Shipley*, “we are not convinced that the burden of the system’s inadequacies should fall on [a party].” (*Id.*) In this case, applicant filed the petition on September 14, 2022. Thereafter, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties. Therefore, considering that the Appeals Board’s failure to act on that petition was in error, we find that our time to act on applicant’s petition was tolled.

### II.

The Appeals Board has continuing jurisdiction to “rescind, alter, or amend any order, decision, or award,” if a petition is filed within five years of the date of injury and “good cause” to reopen is alleged and shown. (Lab. Code, §§ 5803, 5804.)<sup>2</sup> An order approving compromise and release is an order that may be reopened for “good cause” under section 5803. 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. (Recinos)* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Workers’ Comp. Appeals*

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<sup>2</sup> All further statutory references are to the Labor Code unless otherwise noted.

*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].) Although applicant filed the petition as one for reconsideration, we treat it as a petition to set aside the OACR. (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 925 [72 Cal.Comp.Cases 778]; *Rubio v. Workers' Comp. Appeals Bd. (Rubio)* (1985) 165 Cal.App.3d 196, 200-201 [50 Cal.Comp.Cases 160].)

Further, 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 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.)

Finally, 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].)

The OACR initially issued following a walk through C&R in 2019, and applicant has now filed a petition with the Appeals Board in the first instance. Because no hearing was held with the WCJ, 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 or 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 March 6, 2019, OACR is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

I CONCUR,

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



**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

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

**June 9, 2023**

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

**NASHAA SIOCO  
SEDGWICK CLAIMS MANAGEMENT SERVICES**

**JMR/pc**

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