

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

**SCOTT HERBERT, *Applicant***

**vs.**

**STATE OF CALIFORNIA DEPARTMENT OF FORESTRY, legally uninsured, STATE  
COMPENSATION INSURANCE FUND, adjusting agency, *Defendants***

**Adjudication Number: ADJ17716100  
Riverside District Office**

**OPINION AND ORDER  
DISMISSING PETITION  
FOR RECONSIDERATION**

Applicant seeks reconsideration of an Award, issued by the workers' compensation administrative law judge (WCJ) on May 19, 2023, wherein the WCJ approved stipulated settlement agreements.

Applicant contends that the case should be returned to the WCJ for further discovery on the issue of whether a seizure suffered after applicant signed stipulations with request for award is a new injury or if it relates to the original injury.

We have not received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied or treated as a Petition to set-aside the Award.

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record and for the reasons discussed below, we will dismiss the Petition as premature, and return this matter to the trial level for consideration of the Petition as one to set aside the Award.

**BACKGROUND**

Applicant claimed injury to his brain, in the form of a seizure, while employed by defendant as a fire captain on October 28, 2022.

Applicant, acting in pro per, and State Compensation Insurance Fund (SCIF) entered into stipulations with request for award, using DWC-WCAB form 10214(a), revised April 2014.

Pursuant to paragraph No. 1, the body part being settled was applicant's brain, with a date of injury (DOI) of October 28, 2022. Specifically, the parties stipulated as follows:

For the specific injury on October 28, 2022, State Fund claim number 06778142 the parties agree that applicant sustained an injury to the following: brain (seizure) as listed in body part code 110.

There is need for future medical care to the following: brain (seizure).

(Stipulations with request for award, ¶ 1, p. 5 (all-caps omitted).)

Paragraph No. 2 contains no information with respect to temporary disability. (Stipulations with request for award, ¶ 2, p. 6.) Paragraph 2(a) is blank. (Stipulations with request for award, ¶ 2(a), p. 6.)

Pursuant to paragraph No. 3, the injuries caused permanent disability of 0%. (Stipulations with request for award, ¶ 3, p. 6.)

Pursuant to paragraph No. 4, there is a need for medical treatment to cure, or relieve from the effects of said injury(ies). (Stipulations with request for award, ¶ 4, p. 6.)

Pursuant to paragraph No. 5, medical-legal expenses and/or liens are "all paid." Defendant reserves the right to pay, adjust, or litigate any lien claim that might arise subsequent to the issuance of the Award. (Stipulations with request for award, ¶ 5, p. 6.)

Pursuant to paragraph No. 7, there are no known liens against compensation, but defendant reserves the right to pay, adjust, or litigate any lien claim that might arise subsequent to the issuance of the Award. (Stipulations with request for award, ¶ 7, p. 6.)

On May 7, 2023, applicant executed the stipulations with request for award.

On May 17, 2023, SCIF executed the stipulations with request for award.

On May 18, 2023, the executed stipulations with request for award were filed with the Board.

On May 19, 2023, the WCJ issued an Award based on the executed stipulations with request for award.

On June 2, 2023, applicant appointed counsel. (Substitution of attorneys, filed June 2, 2023.)

On June 13, 2023, applicant filed a timely petition for reconsideration. The Petition states, in part, as follows:

On 05/08/2023, the day after he signed the settlement documents, Applicant suffered another seizure. A new claim for date of injury 05/08/2023 was filed (ADJ1778843). Defendant has delayed liability for the new claim. Applicant remains off work since 05/08/2023.

(Petition, p. 2:14-17.)

## DISCUSSION

Subject to the limitations of Labor Code<sup>1</sup> section 5804, “[t]he 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.)

We observe that contract principles apply to settlements of workers’ compensation disputes. The legal principles governing compromise and release agreements, and by extension, stipulations with request for award, are the same as those governing other contracts. (*Burbank Studios v. Workers’ Co. Appeals Bd. (Yount)* (1982) 134 Cal.App.3d 929, 935 [47 Cal.Comp.Cases 832].) 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]; Civ. Code, § 1636.)

A stipulation is “‘An agreement between opposing counsel . . . ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,’ (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves ‘to obviate need for proof or to narrow range of litigable issues’ (Black’s Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding.” (*County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) Stipulations are binding on the parties, however, the parties may be permitted to withdraw from their stipulations upon a showing of good cause.<sup>2</sup> (*Id.*, at 1121.)

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

<sup>2</sup> To determine whether there is good cause to rescind awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Labor Code § 5702; *County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118-1121 [65 Cal.Comp.Cases 1]; *Robinson v. Workers’ Comp.*

“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).) Moreover, the WCJ has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924].)

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].) 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 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].)

While applicant is essentially seeking an Order to set aside the Award, the WCJ also wonders whether a petition to reopen may be considered appropriate in light of applicant’s statement that a new application has been filed for the most recent seizure. (Petition, p. 2:14-17.) Section 5410 provides that an injured worker who has previously received workers’ compensation benefits, either voluntarily paid by the employer or pursuant to an award, is entitled to institute proceedings within five years after the date of the injury on the ground that the original injury has caused new and further disability. (Lab. Code, § 5410.)

The WCJ notes that he does not have sufficient information to respond to applicant’s contentions and requests that we return the case to the trial level for further proceedings. In the absence of an evidentiary record, we likewise are unable to evaluate Petitioner’s contentions.

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*Appeals Bd.* (1987) 194 Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers’ Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].) However, as recognized in *Weatherall*, the Appeals Board may also, in its discretion, reject factual stipulations and set the matter for hearing and further investigation. (*Weatherall, supra*, at 1119; Lab. Code, § 5702.)

Accordingly, we dismiss the Petition as premature and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend that the WCJ treat applicant's Petition as a petition to set aside, including setting a hearing to allow the parties to provide evidence and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, any aggrieved person may then timely seek reconsideration of that decision.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration of the May 19, 2023 Award is **DISMISSED**.

**IT IS FURTHER ORDERED** that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**AUGUST 14, 2023**

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

**SCOTT HERBERT  
WHITING, COTTER & HURLIMANN  
STATE COMPENSATION INSURANCE FUND**

**JB/cs**

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