

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

AUDOMERO RODRIGUEZ-RUELAS, *Applicant*

vs.

DESERT EXPRESS, *Defendant*

**Adjudication Number: ADJ1993825
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR RECONSIDERATION**

Applicant seeks reconsideration of the Stipulations and Award and/or Order of October 14, 2008, wherein the workers' compensation judge (WCJ) dismissed applicant's case. Applicant contends he has no recollection of being advised of the dismissal of his case and that he would like to reopen his case for his legal benefits.

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

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 and return this matter to the WCJ to treat as a petition to set aside the Stipulation and Award and/or Order.

FACTS

On October 14, 2008, the parties submitted a handwritten signed Stipulation and Award and/or Order for approval which states:

Having waived the provisions of Labor Code § 5313, the parties stipulate as follows:

The parties hereto stipulate and agree: That applicant's claim is a post-termination claim subject to the provisions of Labor Code § 3600(a)(10), and applicant agrees to dismiss his case accordingly. Applicant agrees that he did

not provide notice of his alleged injuries until after his employment was terminated, that he sought and obtained no medical treatment until after his employment was terminated, that employer otherwise had no notice of any injury or injuries, and that all other requirements to establish a post termination defense have been met. By signing this stipulation applicant requests and agrees to an order dismissing his case with prejudice.

(Stipulation and Award and/or Order, dated 10/14/08, p. 2.) The WCJ approved the stipulation and marked the document as “It is so ordered” on October 14, 2008.

Applicant filed a Petition for Reconsideration from the Stipulation and Award and/or Order, stating that he has no recollection of being advised of the dismissal of his case and that he would like to reopen his case for his legal benefits.

DISCUSSION

I.

Former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

¹ All further statutory references are to the Labor Code unless otherwise noted.

Here, according to Events, the case was transmitted to the Appeals Board on October 14, 2024, and 60 days from the date of transmission is December 13, 2024. This decision is issued by or on December 13, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the WCJ, the Report was served on October 14, 2024, and the case was transmitted to the Appeals Board on October 14, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 14, 2024.

II.

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 that 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.)

Labor Code section 5702 provides 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.)

As workers' compensation proceedings are informal, “there are certain safeguards in place to protect workers from unknowingly releasing their rights.” (*Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291, 301 [83 Cal.Comp.Cases 1014].) “To safeguard the injured worker from entering into unfortunate or improvident releases as a result of, for instance, economic pressure or bad advice, the worker's knowledge of and intent to release particular benefits must be established separately from the standard release language of the form.” (*Claxton v. Waters* (2004) 34 Cal.4th 367, 373 [69 Cal.Comp.Cases 895]; see also *Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291, 301 [83 Cal.Comp.Cases 1014].)

Some of the safeguards are included in WCAB Rule 10700:

(a) When filing a Compromise and Release or a Stipulations with Request for Award, the filing party shall file all agreed medical evaluator reports, qualified medical evaluator reports, treating physician reports, and any other that are relevant to a determination of the adequacy of the Compromise and Release or Stipulations with Request for Award that have not been filed previously.

(b) 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.) Further, section 5001 provides that no settlement is valid unless the Appeals Board or a WCJ approves the settlement. (*Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291, 301.)

In the instant case, no application for adjudication was filed. The Stipulation and Award and/or Order is the first document filed in the case and it does not include date of injury, date of termination, the insurance carrier, claimed body parts, or applicant's occupation. No medical evidence was provided. (Cal. Code Regs., tit. 8, § 10700(a).) In fact, it is not clear what rights applicant actually relinquished when he signed the Stipulation, and whether it is enforceable. Moreover, there was no hearing and applicant was also not provided any award. In his Petition for Reconsideration, applicant states that he has no recollection of being advised of the dismissal of his case and has no memory of getting notice or a final order of dismissal.

On this meager Stipulation and Award and/or Order, it was necessary for the WCJ to set the matter for a hearing to take evidence to determine whether the agreement should have been approved or not. (Cal. Code Regs., tit. 8, § 10700(b).) Instead, the WCJ abdicated their duty under the workers' compensation system to protect this worker from unknowingly releasing their rights. (*Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291, 301 [83 Cal.Comp.Cases 1014].) The worker's knowledge of and intent to release particular benefits was not adequately established. (*Claxton v. Waters* (2004) 34 Cal.4th 367, 373 [69 Cal.Comp.Cases 895]; see also *Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291, 301 [83 Cal.Comp.Cases 1014].)

III.

Additionally, the Appeals Board has continuing jurisdiction to “rescind, alter, or amend any order, decision, or award.” (Lab. Code, § 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 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].) Duress requires “evidence that the aggrieved party was subjected to threats or coercion that would have induced sufficient fear to compel the party to act in a manner in which he or she would not have normally acted.” (*Beverly Hills Center for Arthroscopic and Outpatient Surgery, LLC v. Workers' Comp. Appeals Bd. (Cardozo)* (2013) 78 Cal.Comp.Cases 340, 342.)

The Stipulation and Award and/or Order was signed by the parties and the WCJ approved it on October 14, 2008, and applicant has now filed a petition with the Appeals Board in the first instance. Although applicant filed the petition as one for reconsideration, we treat it as a petition to set aside the Stipulation and Award and/or Order. (*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].)

There is no evidence in the record regarding what applicant understood about the terms of the contract, nor what applicant was told with respect to the adequacy of the settlement. Because no hearing was held, the WCJ did not have the opportunity to assess applicant's understanding of

the proposed agreement. Consequently, the record is insufficient, both as to the issue of whether applicant understood the terms of the settlement agreement and whether the settlement was adequate.

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.)

For example, in *Cerrillo v. Home Depot* (Feb. 8, 2019, ADJ7726177) [2019 Cal.Wrk.Comp. P.D. LEXIS 48, *8], applicant contended that he was “’pressured and manipulated to settle by the I&A officer and the WCJ.”² However, as there was no evidence or testimony admitted into the record regarding those allegations, the Appeals Board found that it was premature to decide the issue and returned the matter to the WCJ to consider the petition as one to set aside. (*Id.* at pp. *8-9.) Similarly, in *Fernandez v. MBM Corp.*, (June 13, 2017, ADJ10199969) [2017 Cal.Wrk.Comp. P.D. LEXIS 264, *8], there was no record regarding applicant's state of mind when he executed the settlement. If he did not understand that he was relinquishing his right to pursue the section 132a claim, the Appeal Board found that this may constitute good cause to set aside the Order Approving the C&R. (*Id.*)

² Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers’ compensation judges. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) While not binding, the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc).) We find the reasoning in *Cerrillo* and *Fernandez* persuasive given that the case currently before us involves similar legal issues.

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 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].)

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. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the October 14, 2008, Stipulation and Award and/or Order is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 13, 2024

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

**AUDOMERO RODRIGUEZ-RUELAS
EQUITABLE LAW FIRM
TOBIN LUCKS**

JMR/mc

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