

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

JOSHLYN JAMISON, *Applicant*

vs.

K-DESIGNERS; STATE COMPENSATION INSURANCE FUND, *Defendants*

**Adjudication Number: ADJ19020828
Sacramento District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant, acting in pro per, seeks reconsideration of the Order Approving Compromise and Release (OACR), issued by the workers' compensation administrative law judge (WCJ) on June 18, 2024.

Applicant contends that upon returning to work following an industrial injury, she suffered harassment and was ultimately fired in retaliation.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be granted and that the matter sent back for a hearing on whether there is good cause to set aside the Order Approving Compromise and Release.

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

Based on our review of the record, as recommended by the WCJ in her Report, and for the reasons discussed below, we will dismiss the Petition so that the WCJ may treat it as a set aside and conduct further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to respiratory system, circulatory system, and stress while employed by defendant as a telemarketer on December 20, 2022.

Applicant and State Compensation Insurance Fund (SCIF) entered into a compromise and release (C&R). The body parts being settled were respiratory system (850), circulatory system (801), and stress (841). (C&R, ¶ 1, p. 3.) The date of injury was December 20, 2022. (*Id.*)

Paragraph No. 9 provides a field for comments.

See attached addenda which are incorporated by reference herein. Settlement based on PTP report, Dr. Tennison. Dated 01/19/2023 who determines no industrial causation. Parties wish to buy their peace and forgo further litigation. Penalty and interest waived if settlement is paid within 30 days of receipt of OACR by defendant.

(C&R, ¶ 9 comments, p. 7 [original in app-caps].)

The last page of the PDF is entitled “continuation of comments” with the following:

The parties agree to this C&R in order to avoid the hazard of further litigation. Dr. Tennison report dated 1/9/2023 indicating that Ms. Jamison’s complaints are non-industrial, the settlement resolves all issues pertaining to applicant’s alleged injuries to respiratory system, circulatory system and psyche/stress.

A genuine dispute exists as to injury AOE/COE of all body parts, which could, if resolved against applicant, defeat applicant’s right to recover any benefits. The parties agree that the applicant will not receive the SJDB voucher. Parties request a finding pursuant to Thomas and Beltran.

Applicant acknowledges her right to a PQME’s opinion, but stipulates to waiving that right.

This settlement includes any claims for retroactive benefits and reimbursement, including but not limited to, temporary disability indemnity, mileage reimbursement, out-of-pocket medical expenses and any interest or penalties, including but not limited to, sanctions and self-imposed penalties claimed up to the date of the order approving compromise and release.

(C&R, unnumbered page titled “continuation of comments” at p. 15 of PDF [original in app-caps].)

Paragraph No. 11 provides the following:

WARNING TO EMPLOYEE: SETTLEMENT OF YOUR WORKERS’ COMPENSATION CLAIM BY COMPROMISE AND RELEASE MAY AFFECT OTHER BENEFITS YOU ARE RECEIVING TO WHICH YOU BECOME ENTITLED TO RECEIVE IN THE FUTURE FROM SOURCES OTHER THAN WORKERS’ COMPENSATION, INCLUDING BUT NOT LIMITED TO SOCIAL SECURITY, MEDICARE AND LONG TERM DISABILITY BENEFITS.

THE APPLICANTS (EMPLOYEE'S) SIGNATURE MUST BE ATTESTED TO BY TWO DISINTERESTED PERSONS OR ACKNOWLEDGED BEFORE A NOTARY PUBLIC

By signing this agreement, applicant (employee) acknowledges that he/she has read and understands this agreement and has had any questions he/she may have had about this agreement answered to his/her satisfaction.

(C&R, ¶ 11, p. 8.)

Following Paragraph No. 11, the following is typed:

Here you go

-you stated that this papers is only for the settlement of 5000 and will not release my job at Kdesigners ... now if you want me to release my job the amount will be \$20,000.

On May 17, 2024, applicant signed the C&R.

On May 28, 2024, attorney for defendant signed the C&R.

On June 10, 2024, defendant submitted the signed C&R to the WCJ for approval by way of mail.

On June 12, 2024, the WCJ signed the Order Approving Compromise and Release, on June 18, 2024, the WCJ designated defendant to serve the Order Approving Compromise and Release, and defendant served the Order Approving Compromise and Release on June 21, 2024, by way of mail.

On July 3, 2024, applicant filed the Petition.

On July 8, 2024, applicant filed a Petition for Discrimination Benefits Pursuant to Labor Code section 132a, alleging that defendant harassed her regarding her disability

On July 9, 2024, the WCJ issued the Report, requesting that the Appeals Board grant applicant's Petition and return the matter for a hearing on whether there is good cause to set aside the Order Approving Compromise and Release.

DISCUSSION

I.

Former Labor Code 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, Labor Code 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 Labor Code 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.” Here, according to Events, the case was transmitted to the Appeals Board on July 9, 2024, and 60 days from the date of transmission is Saturday, September 7, 2024. This decision is issued by or on the next business day after September 7, 2024, which is Monday, September 9, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a). (See Cal. Code Regs., tit. 8, § 10600(b).)¹

Labor Code 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. Labor Code 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 workers’ compensation administrative law judge, the Report was served on July 9, 2024, and the case was

¹ WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:
Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

transmitted to the Appeals Board on July 9, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 9, 2024.

II.

We observe that contract principles apply to settlements of workers' compensation disputes. The legal principles governing compromise and release agreements 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].) There can be no contract unless there is a meeting of the minds and the parties mutually agree. (*Sackett v. Starr* (1949) 95 Cal. App. 2d 128; Civ. Code, § 1550, see *Sieck v. Hall* (1934) 139 Cal. App. 279; Civ. Code, § 1565.) 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.)

To safeguard injured workers from agreeing to unfair or unwise settlements, Labor Code section 5001 provides that no settlement is valid unless the Workers' Compensation Appeals Board or a workers' compensation referee approves the settlement. (*Steller v. Sears, Roebuck & Co.* (2010) 189 Cal.App.4th 175, 180 [75 Cal.Comp.Cases 1146].)

Moreover, "[t]he 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).) This inquiry should carry out the legislative objective of safeguarding the injured worker from entering into unfortunate or improvident releases as a result of, for instance, economic pressure or lack of competent advice. (*Claxton v. Waters* (2004) 34 Cal.4th 367, 373 [69 Cal.Comp.Cases 895]; *Sumner v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 965, 972-973.) The worker's knowledge of and intent to release particular benefits must be established separately from the standard release language of the form. (*Claxton, supra*, at 373.)

Here, the C&R was approved without a hearing, so the WCJ did not have the opportunity to assess applicant's understanding of the proposed settlement agreement. For example, applicant's understanding of the statement that "Applicant acknowledges her right to a PQME's opinion, but stipulates to waiving that right." (C&R, unnumbered page titled "continuation of comments" at p. 15 of PDF.) We also note that parties stipulated to settle only the following body parts: respiratory system (850), circulatory system (801), and stress (841). However, on the final page of the PDF the additional body part of psyche was listed. While Paragraph No. 1 is controlling with respect to the body parts included in the proposed settlement, we recommend that the WCJ clarify applicant's understanding.

WCAB Rule 10205.2 sets forth the forms to be used to settle a case by compromise and release. (Cal. Code Regs., tit. 8, § 10205.2.) Here, the parties appropriately used DWC-CA form 10214 (c). Pursuant to Paragraph No. 9 "only issues initialed by the applicant or his/her representative and defendants or their representatives are included within the settlement." As the WCJ states in the Report, there is a check mark next to each of the items in Paragraph No. 9, including discrimination (Labor Code §132a), but none of the issues are initialed. In light of applicant's Petition for Discrimination Benefits Pursuant to Labor Code section 132a, it is unclear what issues she intended to include within the settlement.

"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 unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*Weatherall, supra*, at 1121.)

"Good cause" to set aside an order or stipulations depends upon the facts and circumstances of each case. "Good cause" includes, but is not limited to, 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]; *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311].) 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; *Weatherall, supra*, 1118-1121; *Robinson v. Workers' Comp.*

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].)

We note that while the parties may stipulate to the facts in controversy, the WCJ is not bound by the parties' stipulations and may make further inquiry into the matter "to enable it to determine the matter in controversy." (Lab. Code, § 5702; see also *Weatherall, supra*, at 1119; *Turner Gas Co. v. Workers' Comp. Appeals Bd. (Kinney)* (1975) 47 Cal.App.3d 286 [40 Cal.Comp.Cases 253].)

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].)

As an unrepresented employee, applicant would require an evaluation by a QME, as opposed to a treating physician or agreed medical evaluator, to determine compensability, if any, and the existence or extent of permanent impairment. (Lab. Code, §§ 4060-4062.3.) The determination of compensability, the existence or extent of permanent impairment, and limitations, if any, resulting from an injury all require a medical evaluation.

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].)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*)). 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." (*Id.* at 475; see Lab. Code, § 5313 and

Blackledge v. Bank of America, ACE American Insurance Company (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].)

Accordingly, we dismiss applicant’s Petition so that upon return of this matter to the trial level, the WCJ may treat the Petition as a petition to set aside and set a hearing to allow the parties to frame the issues and stipulations, submit exhibits as evidence, call witnesses, if necessary, lodge any objections, make legal arguments, 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 Order Approving Compromise and Release issued by the WCJ on June 18, 2024 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 9, 2024

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

**JOSHLYN JAMISON (pro per)
STATE COMPENSATION INSURANCE FUND**

JB/pm

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

Date of injury: December 20, 2022
Age on DOI: 40 years old
Occupation: Telemarketer
Parts of Body Injured: Respiratory system, circulatory system, stress
Identity of Petitioner: Applicant
Timeliness: Petition was filed timely
Verification: Petition was verified
Date of Order: June 12 20 4 (served June 18, 2024)

Petitioner's contentions: Applicant filed a Petition for Reconsideration based on all grounds. specifically, she contends the decision should be changed because she signed the settlement papers before going back to work and upon returning she suffered harassment by upper management and human resources. She contends they harassed her during bathroom breaks, took her position away, asked personal questions, and ultimately fired her in retaliation.

II/III

FACTS/ DISCUSSION

The parties filed a Compromise and Release that states applicant claimed a specific injury arising on December 20, 222 involving the respiratory system circulatory system, and stress while working as a telemarketer. The Compromise and Release indicates no temporary disability or permanent disability was paid and that Applicant received \$147.11 in medical treatment. The settlement amount is \$5,000 with no deductions. There is a check mark on each of the items on paragraph nine including the item for discrimination 132a, although none are initialed. In the Compromise and Release, Defendant agreed to address the EDD lien and states that it continues to contest the industrial nature of the claim. The settlement is acknowledged before a notary public.

On July 3, 2024, Applicant filed a Petition for Reconsideration contending by the order, decision, or award, the Board acted without or in excess of its powers, the order, decision, or award was procured by fraud, the evidence does not justify the findings of fact, the petitioner has discovered new evidence material to her which she could not with reasonable diligence have discovered and produced at the hearing, and the findings of fact do not support the order, decision, or award.

Specifically, Applicant contends the decision should be changed because she signed the settlement papers before going back to work and upon returning, she suffered harassment by upper management and human resources. She contends they harassed her during bathroom breaks, took her position away, asked personal questions, and ultimately fired her in retaliation.

Later, on July 8, 2024, Applicant filed a Petition for Discrimination Benefits Pursuant to Labor Code section 132a. In that petition, Applicant contends she returned to work after the settlement award and was harassed everyday about her disability and time. Then she requested another doctor's note and informed her employer about her autistic son but was fired.

IV
RECOMMENDATION

It is respectfully recommended that Applicant's Petition for Reconsideration be granted, and the matter sent back for a hearing on good cause to set aside the Order Approving Compromise and Release.

Date: July 9, 2024

Ariel Aldrich
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE