

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

LILI STERNBERG (Deceased) AND ROYA STERNBERG (Daughter), *Applicants*

vs.

WESTWOOD SEPHARDIC EDUCATIONAL CENTER, *Defendant*

**Adjudication Number: ADJ6941668
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant filed a Petition for Reconsideration (Petition) on April 18, 2024 seeking to vacate an Order Approving Compromise and Release (OACR) issued on March 29, 2024 by a workers compensation judge (WCJ). Defendant contends that they did not receive notice of the March 28, 2024 Mandatory Settlement Conference (MSC) and that the OACR was obtained through a denial of their due process rights.

Applicant filed an Answer and the WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be denied.

We have considered the Petition and the Report. We have also reviewed the record in this matter. Based upon our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and the reasons discussed below, we deny the Petition.

Defendant contends that notice was not received for the March 28, 2024 MSC and claims to have been denied due process when the WCJ issued a March 29, 2024 OACR in response to submission of a Compromise and Release Agreement by the parties. In a December 5, 2023 Order Rescinding Order Approving Compromise and Release, however, the WCJ set the matter for the March 28, 2024 MSC. Proof of Service (POS) of the Notice of Hearing (NOH) was attached to the Order. Per the December 5, 2023 POS, both the Order and NOH were served upon defendant's address, which is listed as: P.O. Box 7385 Beverly Hills, California 90212. This is the same address listed for defendant in the Official Address Record (OAR). This is also the address a prior October 27, 2023 Notice of Intent (NOI) to Approve Compromise and Release was sent to previously. The

prior NOI was clearly received by defendant as it prompted a response in the form of an objection dated November 16, 2023. It would therefore appear that notice of the March 28, 2024 MSC was correctly addressed.

Pursuant to Evidence Code section 641, “A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.” (See also *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1817 (Appeals Board en banc); *AO Alfa-Bank v. Yakovlev* (2018) 21 Cal.App.5th 189, 212; *Hagner v. United States* (1932) 285 U.S. 427, 430 [“[t]he rule is well settled that proof that a letter properly directed was placed in a post office, creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed”]; *Minniear v. Mt. San Antonio Community College District* (1996) 61 Cal.Comp.Cases 1055, 1059 (Appeals Board en banc) [typical presumption affecting the burden of producing evidence “is the presumption that a mailed letter was received”].)

Defendant provides no evidence to substantiate their claim that notice was not received, and the record does not contain evidence of a notice of change of mailing address. As explained in *Alvarado v. Workmen’s Comp. Appeals Bd.* (1970) 35 Cal.Comp.Cases 370 (writ den.) and *Castro v. Workers’ Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1460 (writ den.), mere allegation that a recipient did not receive a mailed document is insufficient to rebut the Evidence Code section 641 presumption. If the sending party produces evidence that a document was mailed, the burden shifts to the recipient to produce “believable contrary evidence” that it was not received. (*Craig v. Brown & Root* (2000) 84 Cal.App.4th 421-422, citing *Slater v. Kehoe* (1974) 38 Cal.App.3d 819, 832, fn. 12.) Once the recipient produces sufficient evidence showing non-receipt of the mailed item, “the presumption disappears” and the “trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received.” (*Id.*)

No such evidence, however, has been submitted by defendant to rebut the presumption in this case. In light of the foregoing, we must presume defendant received notice of the March 28, 2024 MSC and failed to attend the hearing of his own accord. As such, we deny the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the March 29, 2024 Order Approving Compromise and Release is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 13, 2024

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

**ROYA STERNBERG on behalf of LILI STERNBERG
LAW OFFICES OF GODWIN & RUBIN
OFFICE OF THE DIRECTOR – LEGAL UNIT
UNINSURED EMPLOYERS BENEFITS TRUST FUND
WESTWOOD SEPHARDIC EDUCATIONAL CENTER**

RL/cs

I certify that I affixed the official seal of the
Workers' Compensation Appeals Board to
this original decision on this date.
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REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION

INTRODUCTION:

On April 18, 2024, the Defendant, by its representative, Rabbi Shimon Kashani, filed a timely and verified petition for reconsideration dated April 17, 2024, alleging that the undersigned WCJ erred in his Opinion and Order Approving Compromise & Release (Dependency) dated March 29, 2024. The Defendant claims that it did not have notice of the mandatory settlement conference scheduled for March 28, 2024 and was denied its due process right to litigate the underlying facts surrounding the Applicant's workers' compensation claim for accrued and death benefits.

STATEMENT OF FACTS:

The decedent, Lili Sternberg, while employed on January 21, 2001 as a preschool teach, sustained a disputed industrial injury when, while she was crossing a street, a vehicle struck her resulting in her subsequent death. The Applicant, Roya Sternberg, filed a workers' compensation claim seeking accrued and death benefits.

On July 16, 2012, the Applicant entered into a stipulation, dated July 16, 2012, with the Defendant's bankruptcy attorney to release any right of collection against it, seeking only to pursue any recovery with the Uninsured Employers Benefits Trust Fund.

On October 26, 2023, the Applicant and the Uninsured Employers Benefits Trust Fund entered into settlement by way of compromise and release to resolve the case in chief for \$20,357.50. The undersigned WCJ issued his notice of intention to approve the settlement on October 27, 2023. Having failed to receive any objection, on November 22, 2023, the undersigned WCJ issued his order approving compromise and release. The proof of service dated November 22, 2023, reflected service by mail on the Defendant at Post Office Box 7385, Beverly Hills, California 90212. On November 20, 2023, Rabbi Kashani filed a timely objection dated November 16, 2023, that was not uploaded to FileNet until December 4, 2023. The undersigned WCJ issued his order rescinding his order approving compromise and release on December 5, 2023 and scheduled the case for a mandatory settlement conference on March 28, 2024 at 8:30 a.m. The proof of service of dated December 5, 2023, reflected service by mail on the Defendant at Post Office Box 7385, Beverly Hills, California 90212.

On March 28, 2024 at 8:30 a.m., the Applicant, by her attorney of record, Irina Rubin, appeared as well as the Department of Industrial Relations, by Thomas Routson, appearing for the Uninsured Employers Benefits Trust Fund. Taking the case off calendar, the undersigned WCJ wrote on the minutes of hearing the following minute reflection:

“Non-appearance of Shimon Kashani. OD Legal contacted Defendant at (310) 312-5617 at 10:55 a.m. leading to a voicemail box that was full. OACR to issue.”

On March 29, 2024, the undersigned WCJ reissued his order approving compromise and release (dependency).

Aggrieved by the undersigned WCJ’s decision, the Defendant filed the present petition for reconsideration.

DISCUSSION:

The due process clause of the 14th Amendment of the U.S. Constitution requires a WCJ to give parties a fair and open hearing. [Massachusetts Bonding & Ins. Co. v. Ind. Acc. Comm. (Himes) (1946) 11 Cal. Comp. Cases 144, 146.] In addition, the parties have a right to present evidence and witnesses to establish a claim or defense. [Evans v. Ind. Acc. Comm. (1945) 10 Cal. Comp. Cases 271, 274; Alvarez v. Crefitta, Inc. (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 449, *6 (Appeals Board noteworthy panel decision).]

However, where an aggrieved uninsured Defendant, who has proper notice to appear at a scheduled hearing in order to assess the reasonableness of a pending settlement between an applicant and the Uninsured Employers Benefits Trust and fails to appear, under the doctrine of invited error, that Defendant is estopped from asserting any prejudicial error where its own conduct caused or induced the commission of the wrong. [Telles Transport, Inc. v. Workers’ Comp. Appeals Bd. (2001) 66 Cal. Comp. Cases 1290, 1295.]

In this case, the Defendant has failed to make any appearances at any scheduled court dates and has engaged instead in an arm’s length letter writing strategy intending only to frustrate others who are attempting to conclude this case. Under the doctrine of invited error, the Defendant’s intentional absence should not result in the undoing of the present settlement.

Therefore, for the reasons set forth above, there is no reasonable basis to disturb the undersigned WCJ’s order approving compromise and release.

RECOMMENDATION:

The undersigned WCJ respectfully recommends that the WCAB deny the Defendant's petition for reconsideration dated April 18, 2024.

Date: April 19, 2024

**DAVID L. POLLAK
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**