

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

**RAUL ALVAREZ, Sr., *Applicant***

**vs.**

**SUPER CENTER CONCEPTS dba SUPERIOR GROCERS; SAFETY NATIONAL  
CASUALTY CORPORATION, *Defendants***

**Adjudication Numbers: ADJ9728181; ADJ9728179; ADJ9894259  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Joint Findings and Order of March 4, 2024, wherein it was found that while employed during a cumulative period ending October 7, 2014 as an assistant manager/banker, loader/unloader, applicant sustained industrial injury to the right arm, lumbar spine, right knee and psyche. It was found that "The Parties entered into an indemnity only C&R indicating that future medical care is left open for the lumbar spine, right arm, right knee and psyche only."<sup>1</sup> Apparently based on construction of the parties' previous C&R (Compromise and Release) it was found that "The Defendants are not responsible for medical treatment to the applicant's left knee."

Applicant contends that the WCJ erred in finding that defendant is not responsible for treatment to applicant's left knee. We have received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

We will grant reconsideration, rescind the WCJ's decision and issue a new decision reflecting that applicant is entitled to treatment of the left knee on an industrial basis. With regard to any specific modality of treatment, it is unclear on the current record whether the WCAB has jurisdiction to determine the need for medical treatment. If any such dispute exists, it should be determined in the first instance at the trial level.

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<sup>1</sup> The findings of injury in the WCJ's decision and the parties' compromise and release refer to cumulative injuries spanning the same dates and affecting the same body parts. It is unclear why two separate injuries were alleged or stipulated to.

A Compromise and Release agreement was both signed by the parties and approved by a WCJ on August 28, 2018. The first page of the Compromise and Release has “Indemnity Only” handwritten under the document title. For both alleged injuries the body parts listed as “settled” were upper extremities, back, lower extremities, knees [emphasis added], eyes, “stress,” and psyche.

Paragraph 9 of the Compromise and Release contains the following form language: The parties wish to settle these matters to avoid the costs, hazards and delays of further litigation, and agree that a serious dispute exists as to the following issues (initial only those that apply.) ONLY ISSUES INITIALED BY THE APPLICANT OR HIS/HER REPRESENTATIVE AND DEFENDANTS OR THEIR REPRESENTATIVES ARE INCLUDED WITHIN THIS SETTLEMENT.”

The parties initialed next to “earnings,” “temporary disability,” “apportionment,” “injury AOE/COE,” “serious and willful misconduct,” “discrimination (Labor Code §132a),” “statute of limitations,” “other out of pocket” [with “out of pocket” handwritten], “permanent disability,” and “self-procured medical treatment, except as provided in Paragraph 7.” While the form (DWC-CA form 10214(c) (Rev. 11/2008)) lists “future medical treatment” with lines for the parties to initial, these lines were left blank by the parties.

In the “Comments” field under the list of issues settled, the following was handwritten:

Settlement based on reporting of Dr. Berman and Dr. Cohen. Applicant stipulates to industrial injury on an orthopedic + psyche basis only. Settlement resolves all issues of PD, TD, mileage, + out of pocket expenses. Future medical care will include treatment to the lumbar spine, right arm + right knee + psyche only. Future medical subject to UR/IMR per code. Applicant agrees to treat in the MPN. Defendant Safety National to provide a voucher to the applicant w/i 30 days. Penalties + interest waived if payment is made w/i 30 days of OACR. Attached Addendum incorporated by reference.

The addendum states that “Applicant warrants and represents, and the parties stipulate, that Applicant did not sustain any compensable injury as a result of Applicant’s employment by defendant other than the alleged injuries listed in this Compromise and Release, and that as a result of said alleged injuries Applicant did not sustain injury to any body part, system, or condition not listed in this Compromise and Release.” Confusingly, given that it is undisputed that some medical treatment was left open, the addendum also states, “Defendant shall be responsible for only unpaid medical expense incurred through the date of Applicant’s execution of this Compromise and

Release .... Applicant shall be responsible for all medical expense incurred after the date of Applicant's execution of this Compromise and Release.”

The Order Approving Compromise and Release similarly has “Indemnity Only CR” handwritten next to the Award.

We find the Compromise and Release at best ambiguous as to the scope of the settlement. It is true that “Future medical care will include treatment to the lumbar spine, right arm + right knee + psyche only” is susceptible to the interpretation that only direct treatment to those body parts was left open by the settlement. However, it is also open to the interpretation that any need for treatment caused then-existing lumbar spine, right arm, right knee and psyche conditions were left open by the settlement. However, we need not resolve this ambiguity in a vacuum, because the repeated references to an “Indemnity Only” settlement and the fact that “Future Medical Treatment” was not initialed by the parties despite the DWC form informing the parties in capital letters that only issues initialed by the parties were subject to the settlement make it clear to us that any limitation on medical treatment caused by the accepted body parts cannot be enforced. (See generally *Tobar Industries v. Workers' Comp. Appeals Bd. (Phan)* (2012) 77 Cal.Comp.Cases 300 [writ den.] [any ambiguities in Compromise and Release agreement must be construed in favor of the injured worker]; *Dupard v. Washington Redskins* (2012) 2012 Cal. Wrk. Comp. P.D. LEXIS 279, \*6 [Appeals Bd. panel] [scope of settlement in Compromise and Release agreements is strictly construed.]) Both the defendant and the WCJ point to paragraph 2 which settles any claim that “may hereafter arise or develop as a result of the above-referenced injury(ies).” However, this only extends to the benefits that were settled. While applicant has settled any claims for disability indemnity with regard to so-called compensable consequence injuries, as discussed above, claims for further medical treatment were not properly settled.

Thus, the WCJ erred in finding that the Compromise and Release agreement barred a finding for further medical treatment to the left knee under the circumstances of this case. While applicant may have had a left knee condition that was alleged to be industrial but not included as compensable in the 2018 settlement, the medical reporting of primary treating physician orthopedist Tomas Saucedo, M.D. states that, years after the settlement, favoring of the stipulated right knee injury contributed to the need for left knee treatment. (November 10, 2021 report at p. 1 [“However as a result of favoring his right knee he has notably increased pain and discomfort to his left knee and at this time indicates that his left knee pain has become more pronounced and

more very difficult to engage in routine activities of daily living as a result of his increased pain to that extremity.”].) Since the right knee injury was accepted and it caused a need for medical treatment to the left knee, treatment to the left knee constitutes care “that is reasonably required to cure or relieve the injured worker from the effects of the worker’s injury.” (Lab. Code, § 4600, subd. (a).)

We therefore grant reconsideration, rescind the WCJ’s decision, and issue a new decision reflecting that applicant’s injury has caused a need for medical treatment of the left knee. We do not rule upon the propriety of any specific modality of treatment since it is unclear if that was an issue to be determined at trial, or if the WCAB has jurisdiction over that issue. (See generally *State Compensation Insurance Fund v. Workers’ Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 236 [73 Cal.Comp.Cases 981]; Lab. Code, §§ 4610 et seq.)

For the foregoing reasons,

**IT IS ORDERED** that Applicant’s Petition for Reconsideration of the Joint Findings and Order of March 4, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision after Reconsideration of the Workers’ Compensation Appeals Board that the Joint Findings and Order of March 4, 2024 is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

### **FINDINGS OF FACT**

1. In ADJ9728179, Raul Alvarez, while employed during the period October 7, 2013 through October 7, 2014 as an assistant banker/manager, loader/unloader at Santa Fe Springs, California, by Super Center Concepts, Incorporated, doing business as Superior Grocers, sustained injury arising out of and in the course of employment to his right arm, lumbar spine, right knee and psyche.

2. In ADJ9728181, Raul Alvarez, while employed during the period October 6, 2013 through October 7, 2014, as an assistant banker/manager, loader/unloader at Santa Fe Springs, California, by Super Center Concepts, Incorporated, doing business as Superior Grocers, sustained injury arising out of and in the course of employment to his right arm, lumbar spine, right knee and psyche.

3. At the time of the injury, the employer's workers' compensation carrier was Safety National Casualty Corporation, administered by Helmsman Management Services.

4. Applicant's right knee injuries herein have caused a need for medical treatment of the left knee.

5. The Compromise and Release and the Order Approving Compromise and Release of August 28, 2018 do not preclude an award of medical treatment of the left knee caused by the right knee injuries.

**AWARD**

Award is made in favor of RAUL ALVAREZ, SR. against SAFETY NATIONAL CASUALTY COMPANY as follows:

- a. All medical treatment caused by the applicant's injury necessary to cure or relieve from the effects of applicant's injury, including treatment of applicant's left knee.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



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

**May 21, 2024**

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

**RAUL ALVAREZ, SR.  
GLAUBER BERENSON VEGO  
HORA LAW FIRM**

**DW/oo**

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