WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SUYAPA PINEDA, ***Applicant***

vs.

L.A. KOREANA, INC., YHB LONG BEACH, dba HOLIDAY INN LONG BEACH AIRPORT; EVEREST NATIONAL INSURANCE COMPANY as adjusted by SEDGWICK CLAIMS MANAGEMENT SERVICES, ***Defendants***

Adjudication Numbers: ADJ10870218, ADJ12089372
Pomona District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.[1]

Defendant Everest National Insurance Company (Everest) seeks reconsideration of the Joint Findings and Award (F&A) issued by a workers' compensation administrative law judge (WCJ) on May 11, 2021, wherein the WCJ found in pertinent part that: applicant claimed cumulative injury from May 17, 2016 to May 17, 2017 to various body parts, while employed as a housekeeper for defendant (case number ADJ10870218); applicant claimed cumulative injury from February 15, 2018 through February 15, 2019 to various body parts, while employed as a housekeeper for defendant (case number ADJ12089372); Everest was the employer's workers' compensation insurance carrier from "December 31, 2017 to December 31, 2017"; there was no evidence that the settlement entered into in case number ADJ10870218 was intended to settle case number ADJ12089372; defendant Everest "lacks standing to litigate the terms of the agreement entered into and the Compromise and Release documents filed in case number ADJ10870218"; and applicant is not barred from pursing the claim in case number ADJ12089372.

Everest contends that the C&R as originally written is controlling and bars applicant from pursuing her claim in her second case.

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[1] Commissioner Lowe, who was on the panel that issued the order granting reconsideration, is no longer a member of the Appeals Board. Another panel member has been assigned in her place.

We received a Report and Recommendation (Report) from the WCJ, wherein she recommends that the Petition for Reconsideration be denied.

We received an Answer from applicant.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will affirm the F&A, except that we will amend it to correct the clerical error in Finding 3 as to Everest's dates of coverage to the stipulated period of December 31, 2017 to December 21, 2019.

BACKGROUND

As set forth in the WCJ's Report:

> Applicant, Suyapa Pineda, filed an Application for Adjudication of claim for a cumulative trauma during the period May 17, 2016, through May 17, 2017 (ADJ10870218). That application alleged injury as fingers, upper extremities, back, shoulders and knee. The defendant carriers named in that case were Cypress Insurance Company and Sompo International/State National Insurance.
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> Applicant also filed an Application for Adjudication of claim for a cumulative trauma during the period February 15, 2018 through February 15, 2019 (ADJ12089372). That application alleged injury as the head, upper extremities, lower extremities, circulatory system and nervous system. The defendant carrier named in that case was Everest National Insurance.
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> Both claimed injuries were alleged to have occurred while applicant was employed as a housekeeper.
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> (Report, at pp. 1-2.)

In applicant's first case (ADJ10870218) a compromise and release agreement (C&R) was signed by the parties on August 12, 2019, and approved by the WCJ on the same date. (C&R, p. 10; 3/9/20 Order approving C&R, p. 1.) The parties to that agreement were applicant, applicant's employer L.A. Koreana, Inc., YHB Long Beach, doing business as Holiday Inn Long Beach Airport, and two insurance companies, Sompo International Insurance and Cypress Insurance Company. (C&R, pp. 1-3.) In that agreement, these parties agreed to a $45,000 settlement amount, to resolve case ADJ10870218, regarding applicant's cumulative injuries to her fingers, upper extremities, back, shoulders and knees, during the time period from May 17, 2016 through May 17, 2017. (C&R, ¶ 1, p. 4, and ¶ 7, p. 8.)

Paragraph 2 of the C&R explained that, upon approval by the WCJ, and payment of applicant by defendant, the C&R would serve to release,

> the above-named employer(s) and insurance carrier(s) from all claims and causes of action, whether now known or ascertained or which may hereafter arise or develop as a result of the above-referenced injury(ies)…
>
> (C&R, ¶ 2, p. 7.)

Paragraph 2 does not release parties who are not named in the agreement, nor does it release claims regarding injuries that are not listed in the agreement.

Similarly, paragraph 3 explains that the C&R,

> is limited to settlement of the body parts, conditions, or systems and for the dates of injury set forth in Paragraph No. 1 and further explained in Paragraph No. 9 ***despite any language to the contrary elsewhere in this document or any addendum***.
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> (C&R, ¶ 3, p. 7, emphasis added.)

It is clear from the parties' language in paragraph 8 of the C&R that defendant denied liability arising out of and in the course of employment (AOE/COE). Paragraph 8 included the sentence,

> the parties stipulate that Applicant suffered no other industrial injuries while employed by this employer except those settled in this C&R, and that the injuries settled in this C&R are fully described herein as to their nature and extent.
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> (C&R, ¶ 8, p. 8.)

A series of emails among the parties, written 10 days prior to the C&R being signed, and entered into evidence on January 14, 2021, demonstrated that all parties agreed that the first clause of sentence above, in paragraph 8 of the C&R, would be corrected, before signing, to indicate "the parties stipulate that applicant suffered no other industrial injuries while employed by this employer through 12/30/17, …" (5/28/20 Applicant's Exb. 1; 1/14/21 MOH, p. 2.) The parties then inadvertently signed and filed the wrong version of the C&R, that did not include this change. (5/28/20 Applicant's Exb. 2.) Applicant's attorney explained that the parties agreed that two of the attorneys would "appear in front of Judge Bernal to see what we can do to change the C&R to reflect the agreement of the parties. Me and Tiffany saw Judge Bernal on 8/19/19 and informed her of the issue. Judge Bernal then indicated that we can leave the 2 pages (with the corrected

language) and she will have her secretary swap out the pages. This was apparently never done." (*Ibid*.)

Applicant's second case number, ADJ12089372, was not listed on the C&R settling case number ADJ10870218. Everest National Insurance and its claims administrator Berkshire Hathaway were not listed as parties to the C&R, and did not sign the C&R. The dates of injury in applicant's second case, and the body parts included in applicant's second case, were not listed in the C&R. (C&R, ¶ 1, p. 4.) No C&R was entered into regarding applicant's second case, ADJ12089372.

As set forth in the WCJ's Report:

> Trial proceeded on the following limited issue with all other issues deferred without prejudice: Whether the previously approved Compromise and Release (ADJ10870218) bars applicant from pursuing the claim set forth in (ADJ12089372).
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> Testimony was taken October 21, 2020 from applicant. Further testimony was taken from applicant February 17, 2021. In addition on February 17, 2021 testimony was taken from Maria Ochoa and Ray Wang. Following trial a Joint Findings and Award was issued May 4, 2021.
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> The Joint Findings and Award issued May 4, 2021, concluded no evidence was offered to sustain the burden of proof that there was a meeting if the minds as to the settlement entered into in case number ADJ 10870218 that it was intended to also settle case number ADJ12089372. Further, that Everest National Insurance Company lacks standing to litigate the terms of the agreement entered into and the Compromise and Release documents filed in case number ADJ10870218.
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> The Joint Findings and Award issued May 4, 2021, concluded the applicant's testimony at trial on October 21, 2020 and February 17, 2021 was found to be credible on the issue whether she intended to settle just one or both of her claims by way of Compromise and Release on August 12, 2019 (Minutes of Hearing and Summary of Evidence October 21, 2020 pages 3 to 5 and Minutes of Hearing and Summary of Evidence February 17, 2021 pages 3 to 4). Based on that credible and unrebutted testimony it was concluded the applicant was not barred from pursuing the claim set forth in case number ADJ12089372. Based on that credible and unrebutted testimony it was concluded the applicant intended to settle only case number ADJ10870218.

> Defendant Everest Insurance Company (ADJ12089372) filed a Petition for Reconsideration on the following grounds: The WCAB acted in excess of its powers; the evidence does not justify the findings of fact; and the findings of fact do not support the order and decision.
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> (Report, at p. 2.)

In its Petition for Reconsideration, defendant Everest contended that the WCJ's granting of "multiple trial continuances resulting in one year delay was prejudicial and exceeded the WCJ's power," that the WCJ erred in relying on applicant's trial testimony to determine "contractual intent" when that testimony "contradicts the terms of the written and signed C&R," that applicant's exhibits were inadmissible, and that the evidence does not justify findings of fact." (Petition, pp. 5-10.)

DISCUSSION

I.

Compromise and release agreements in workers' compensation matters are governed by the same legal principles 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].) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, including an offer of settlement of a disputed claim by one of the parties, and an acceptance by the other. (*Id*.) There can be no contract unless there is a meeting of the minds, and the parties mutually agree upon the same thing. (Civ. Code, §§ 1550, 1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128, 133; *Sieck v. Hall* (1934) 139 Cal.App. 279, 291.) The essential elements of contract also include consideration. (Civ. Code, §§ 1550, 1584, 1595, 1605, et seq., 1659.) "For a compromise and release agreement to be effective, the necessary elements of a contract must exist, including an offer of settlement of a disputed claim by one of the parties, and an acceptance by the other. [citation] A court has no authority to fashion a compromise and release agreement to which the parties have not themselves agreed." (*Yount*, *supra*, 134 Cal.App.3d at 935, citing *Burgess v. California Mut. Bldg. & Loan Assoc*. (1930) 210 Cal. 180.)

A contract must be interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful. (Civ. Code, § 1636; *Camacho v. Target Co.* (2018) 24 Cal.App.5th 291, 310 [83 Cal.Comp.Cases 1014]; *TRB Investments, Inc. v. Fireman's Fund Ins. Co*. (2006) 40 Cal.4th 19, 27; *County of San Joaquin v.*

Workers' Compensation Appeals Bd. (Sepulveda) (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) Since a compromise and release is a written contract, the parties' intention should be ascertained, if possible, from the writing alone, and the clear language of the contract governs its interpretation if an absurdity is not involved. (Civ. Code, §§ 1638, 1639; *Camacho*, *supra*, 4 Cal.App.5th at 306; *TRB Investments*, *supra*, 40 Cal.4th at 27.) The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other. (Civ. Code, § 1641.) Where an agreement is expressed through medium of series of writings, such documents must be construed collectively in ascertaining the whole contract between the parties. (*Katemis v. Westerlind* (1953) 120 Cal.App.2d 537, 542; Civ. Code, § 1641.)

Based on the record before us, there is no evidence that the parties settled applicant's second case (ADJ12089372), in which Everest is the defendant. Pursuant to the plain language of paragraph No. 7 of the C&R, the C&R here was entered into by the "parties": applicant, the employer L.A. Koreana, Inc., also known as YHB Long Beach, DBA Holiday Inn Long Beach Airport and the two named insurance companies, Sompo International Insurance and Cypress Insurance Company, as listed in the C&R. (C&R, pp. 1-4.) These defendants reached an agreement with applicant, in which they agreed to pay consideration to applicant to settle case number ADJ10870218. (C&R, ¶ 1, p. 4, and ¶ 7, p. 8.) Everest was not a party to the C&R, and there is no evidence that Everest entered into any agreement with applicant or agreed to pay any consideration to applicant. (*Id.*) Thus, the C&R is binding upon the parties that entered into the agreement, while it has no effect on applicant's right to pursue a claim against Everest, which was not a party to that agreement. (*Camacho*, *supra*, 4 Cal.App.5th at 306; *Yount*, *supra*, 134 Cal.App.3d at 935.)

In the C&R, the body parts being settled were described in paragraph No. 1 as applicant's fingers, upper extremities, back, shoulders and knees. (C&R, ¶ 1, p. 4.) The dates of injury are the period from May 17, 2016 through May 17, 2017. (*Id.*) These are the same dates and body parts listed in applicant's Application in case number ADJ10870218. (5/18/17 Application.) Based on the principles of contract law generally and the evidence in the record, applicant intended to resolve the issues and body parts in case number ADJ10870218, as to the defendant and insurance companies with whom she entered into the C&R agreement.

Applicant's intention to resolve only her first case was further supported by her testimony at trial, where:

> [She] testified that at the time she signed a settlement document at the WCAB she had two open workers' compensation cases against her employer. It was her intention to settle and close out just one case. When she signed the paperwork she understood she was only trying to close out the one case which she described as the orthopedic case. The other case referred to as a stroke case she wanted to keep open.
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> (Joint Opinion on Decision, p. 4, citing MOH and Summary of Evidence February 17, 2021, page 4.)

The WCJ found her testimony credible on this issue. (F&A, ¶ 5, p. 2.) The WCJ concluded,

> Based on the unrebutted testimony of the applicant at trial, it is concluded the applicant intended to settle only case number ADJ10870218 by way of Compromise and Release and intended to pursue the litigation in case number ADJ12089372.
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> (Joint Opinion on Decision, p. 4.)

We agree with the WCJ's finding that "no evidence was offered to sustain the burden of proof that there was a meeting of the minds as to the settlement entered into in case number ADJ10870218 that it was intended to also settle case number ADJ12089372." (F&A, at p. 2.) The WCJ correctly interpreted the C&R "to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful," as required. (Civ. Code, § 1636; *Camacho*, *supra*, 4 Cal.App.5th at 310; *TRB Investments*, *supra*, 40 Cal.4th at 27; *Sepulveda*, *supra*, 117 Cal.App.4th at 1184.) Moreover, it is well established that a WCJ's opinions regarding witness credibility are entitled to great weight. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500, 505]; *Sheffield Medical Group v. Workers' Comp. Appeals Bd. (Perez)* (1999) 70 Cal.App.4th 868 [64 Cal.Comp.Cases 358]; *Nash v. Workers' Comp. Appeals Bd*. (1994) 24 Cal.App.4th 1793 [59 Cal.Comp.Cases 324]; *Greenberg v. Workmen's Comp. Appeals Bd*. (1974) 37 Cal.App.3d 792 [39 Cal.Comp.Cases 242].) Based upon our review of the record, we see no reason to question the WCJ's opinion as to applicant's credibility, nor the findings based on that opinion.

Our conclusion that the C&R does not encompass applicant's second case is further bolstered by the language in paragraph 3 of the C&R. Paragraph 3 limits the scope of the agreement "to settlement of the body parts, conditions, or systems and for the dates of injury set forth in

Paragraph No. 1 and further explained in Paragraph No. 9 *despite any language to the contrary elsewhere in this document or any addendum*." (C&R, ¶ 3, p. 7, emphasis added.) This means that resolution is limited to only those claims listed in paragraph 1, notwithstanding any contrary language in paragraph 9 or in an addendum. (*Camacho*, *supra*, 24 Cal.App.5th at 298; *Whitson v. Dept. of Social Services-In Home Supportive Services* (2017) 83 Cal.Comp.Cases 596, 600-601; *Orellana v. United Care Servs*. (2015) 2015 Cal.Wrk.Comp. P.D. LEXIS 761 ["Based on the express language in paragraph 3, the contradictory language in [an] addendum is not part of the agreement and cannot be used to bar claims for other body parts or other dates of injury."].) By explicitly limiting the scope of the C&R in this way, paragraph 3 of the C&R in the present case ensures that injuries to other body parts not listed in paragraph 1, injuries on other dates not listed in paragraph 1, and issues not listed in paragraph 9, are not settled by this C&R.

We discern no merit in Everest's contention that applicant is "precluded from pursuing additional claims against the same employer." (Petition, at pp. 9-10.) The WCJ considered this argument at trial and concluded that "applicant intended to settle only case number ADJ10870218 and intended to litigate case number ADJ12089372." (F&A, at p. 2.) We agree. Applicant proved, by a preponderance of the evidence, as required by Labor Code section 3202.5, that the parties intended to amend the C&R to limit the scope of the C&R to apply only to applicant's first case. There was no error in the WCJ's reliance on applicant's trial testimony and other evidence to reach the conclusion that the C&R was amended as described in the exhibits, to exclude applicant's second claim. (Civ. Code, § 1641; *Katemis*, *supra*, 120 Cal.App.2d at 542.)

We conclude, further, that even if the C&R had not been amended, Everest's contention that the terms of the C&R, as originally written, bar applicant from pursuing her claim in case number ADJ12089372 would be without merit. (*Camacho*, *supra*, 24 Cal.App.5th 291.) Applying the legal requirements above to the facts of this case demonstrates that applicant's second case is outside the scope of the C&R agreement in this case: as Everest conceded in its Petition, Everest was not a party to the C&R (Petition, at p. 3); the C&R did not include the case number for applicant's second case (ADJ12089372); and the C&R did not include the later time period, nor the body parts, that were listed in applicant's second case. For each of these reasons, the C&R does not preclude applicant from pursuing her claim in case number ADJ12089372.

II.

An issue not raised at the time of trial or included in a party's list of issues for trial may not be raised for the first time in a petition for reconsideration. (Lab. Code, § 5900(a).)

Regarding Everest's contention that the continuances granted in this matter were prejudicial, we agree with the WCJ that this argument has no merit. (Petition, at pp. 5-7.) As the WCJ correctly noted in the Report, "This issue was not raised at the time of trial or noted in any Minutes of Hearing and Summary of Evidence." (Report at p. 3; 10/21/20 MOH at p. 3; Lab. Code, § 5900(a).) Moreover, defendant's argument lacks merit because it does not assert any specific harm that it suffered as a result of the continuances. Its contention that it was prejudiced because the "facts changed" during the continuances is untrue. When applicant requested that its exhibits addressing the amendment to the C&R be entered into evidence, prior to trial, defendant was given an opportunity to object to these exhibits and did so. (Applicant's Exbs. 1, 2 and 3, filed 5/28/20; 10/21/20 MOH and Summary of Evidence, at p. 2.) At trial, the WCJ admitted applicant's exhibits into evidence, and provided all parties with an opportunity to object and put on opposing evidence. (1/14/21 MOH, at p. 2.) Nothing about this procedure was improper. Moreover, we note that defendant cited no relevant law for its claim that the continuances granted here were improper or prejudicial. (Petition, at pp. 5-7.)

III.

Labor Code sections 5708 and 5709 grant the Appeals Board flexibility to achieve substantial justice with relaxed rules of procedure and evidence. (*Barr v. Workers' Compensation Appeals Bd.* (2008) 164 Cal.App.4th 173, 178.) In determining whether to admit evidence, we are governed by the principles of section 5708, which states that the Appeals Board "shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." (Lab. Code, § 5708.) The weight accorded the evidence is a matter to be determined by the WCJ and by the Appeals Board. (*Garza*, *supra*, 3 Cal.3d at 317; *Lundberg v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 436, 440.)

Here, Everest contends that applicant's trial exhibits regarding the amendment to the C&R were inadmissible because the exhibits were not properly authenticated pursuant to Evidence Code

section 1400(a) and because the exhibits violated the parole evidence rule in Code of Civil Procedure section 1625. (Petition, at pp. 8-9.) Defendant is incorrect. As noted above, the common law and statutory rules of evidence applicable in other types of proceedings are not binding on worker's compensation proceedings. (Lab. Code, §§ 5708, 5709.) Given the relaxed rules of evidence in worker's compensation, we conclude that the emails admitted as Applicant's exhibit 2, along with applicant's credible testimony, were sufficient to authenticate the amendment to the C&R, admitted as applicant's exhibit 1. Compliance with the statutory sections cited by defendant was not required. In addition, Everest had ample opportunity to challenge the admission of these exhibits, when it put its objection on the record on October 21, 2020, and when the WCJ offered all parties the opportunity to raise furthers objections, and Everest chose not to do so. (10/21/20 MOH and Summary of Evidence, at p. 2; 1/14/21 MOH, at p. 2.) We discern no error in the WCJ's finding that applicant's exhibits were admissible.

Moreover, we observe that the substance of applicant's exhibits have no bearing on the outcome here. As discussed above, Everest was not a party to the C&R in case number ADJ10870218. The C&R settled a different case, involving different injuries, during a different time period, as compared to case number ADJ12089372. Applicant's exhibits, whether admitted or not, do not change these basic facts.

Accordingly, we affirm the F&A, except that we amend it to correct the clerical error in Finding 3 as to Everest's dates of coverage to the stipulated period of December 31, 2017 to December 21, 2019.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 11, 2021 Joint Findings and Award is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

3. It was stipulated at trial the employer's workers' compensation carrier was EVEREST NATIONAL INSURANCE for the period December 31, 2017 through December 21, 2019.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 18, 2024

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

SUYAPA PINEDA
LAW OFFICES OF RAY WANG
BLACK AND ROSE, LLP

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