

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TAYLOR DAMERON, *Applicant*

vs.

**MEYERS CONSTRUCTORS, INC., self-insured, administered by ATHENS
ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ17834820
Fresno District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

We have considered the allegations of defendant's Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will dismiss defendant's Petition for Reconsideration and return this matter to the trial level for further proceedings.

FACTS

Applicant's workers' compensation case was resolved by way of Stipulations with Request for Award (Stipulations Agreement), which was signed by the applicant and by defendant's non-attorney representative at ALC Claims. The settlement was approved by the WCJ in an Award issued on June 23, 2023 and served on the parties on the official address record on June 26, 2023. Pursuant to the Stipulations Agreement, defendant agreed to pay applicant 16% permanent disability (PD) at \$290.00 per week, beginning June 1, 2022, for a total of \$16,095.00.

On July 10, 2023, defendant filed a substitution of attorney form, replacing ALC claims with Soleiman APC as their legal representative.

On July 20, 2023, defendant, through their legal counsel, filed a Petition for Reconsideration of the WCJ's June 23, 2023 Award, as well as a Petition for Third Party Credit.

In both petitions, defendant asserted that it was entitled to a credit for proceeds obtained by applicant in a third-party civil settlement reached in June 2023. (Petition for Reconsideration, July 20, 2023, p. 2; Petition for Third Party Credit, July 20, 2023, pp. 1-2, citing Lab. Code, § 3861.) In so arguing, defendant cited a Stipulation for Credit signed by applicant and defense counsel on July 12, 2023. According to the WCJ's Report, the Stipulation for Credit stated that defendant was entitled to credit against any and all future workers' compensation liability in the amount of \$77,214.51. (Report, p. 2.) Defendant argued that the stipulated credit would "engross" the remaining PD due under the June 23, 2023 Award and thus requested that the Appeals Board grant reconsideration thereof.

On September 18, 2023, the Appeals Board dismissed defendant's Petition for Reconsideration as premature, where the Stipulation for Credit had not yet been considered or approved by a WCJ.

On October 23, 2023, the WCJ issued an Order Re: Petition for Credit, finding that defendant was entitled to a credit against any and all future workers' compensation liability in the amount of \$77,214.51. (Credit Order, October 23, 2023.) The WCJ also found that applicant had voluntarily stipulated to the credit.

On November 3, 2023, defendant filed the instant petition, again seeking reconsideration of the WCJ's June 23, 2023 Award. Defendant contends that reconsideration is warranted, where: 1) the credit awarded by the WCJ on October 23, 2023 would engross the remaining PD due under the June 23, 2023 Award, and 2) relieving defendant of its remaining liability under the Award is necessary to prevent applicant from obtaining unlawful double recovery.

DISCUSSION

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) As required by Labor Code section 5313¹ 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 p. 475.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, "the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Ibid.*)

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

Section 5702 states:

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.)

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) As defined in *Weatherall*, "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,' and serves 'to obviate need for proof or to narrow range of litigable issues' in a legal proceeding." (*Id.* at p. 1119, citations omitted.)

"Good cause" to set aside an order or stipulations 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.* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Workers' Comp. Appeals Bd.* (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] (writ den.).)

Here, as noted above, in the October 23, 2023 Order, the WCJ found that applicant had voluntarily stipulated that defendant was entitled to a credit against its workers' compensation liability in the amount of \$77,214.51. (Credit Order, October 23, 2023, p. 1.) However, in order to determine whether there was good cause to permit defendant to withdraw from the Stipulations with Request for Award approved in the June 23, 2023 Award and whether applicant, acting in pro per, understood the possible implications of the Stipulation for Credit, the circumstances surrounding the execution of the stipulation, as well as the third-party settlement, must be assessed. (See Lab. Code, §§ 5702, 5803; *Weatherall, supra*, 77 Cal.App.4th at pp. 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].) As the WCJ aptly notes in the Report:

There has been no notice or opportunity for the in pro per Applicant to be heard as to whether or not there is good cause to allow the defendant to withdraw from their stipulations. *There has been no decision based on admitted evidence in the record as to whether or not good cause exists to allow defendant to withdraw from their stipulations or how the Order for Credit from the third party case applies to the Stipulated Award.*

(Report, p. 4, emphasis added.)

Because there has been no hearing on these issues, there is no evidence or testimony in the record that would allow us to decide whether to grant reconsideration of the WCJ's June 23, 2023 Award. Again, *Hamilton* mandates that the WCJ formally admit evidence into the record so that "a reviewing tribunal, be it the Board on reconsideration or a court on further appeal,...understand[s] the basis for the decision." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) It is the WCJ's responsibility of "clearly designating the evidence that forms the basis of the decision." (*Ibid.*)

Accordingly, we dismiss defendant's Petition for Reconsideration of the WCJ's June 23, 2023 Award and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend that the WCJ treat the Petition for Reconsideration as a petition to set aside the WCJ's Award and set a hearing so that the parties can provide evidence in support of their argument(s) 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 defendant's Petition for Reconsideration of the WCJ's June 23, 2023 Award is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER



JOSEPH V. CAPURRO, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 2, 2024

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

**TAYLOR DAMERON
SOLEIMAN**

AH/cs

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