WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

BARBARA ACOSTA, ***Applicant***

vs.

ADVENTIST HEALTH SYSTEM WEST;
permissibly self-insured, administered by
SEDGWICK, ***Defendants***

Adjudication Number: ADJ6624782
Los Angeles District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION AND DENYING PETITION FOR REMOVAL

The applicant and defendant jointly seek reconsideration, and in the alternative, removal, in response to the First Amended Order Suspending Action (OSA) Compromise & Release (C&R), issued by the workers' compensation administrative law judge (WCJ) on May 8, 2025 and served on May 9, 2025. In the First Amended OSA, the WCJ stated that she could not approve any settlement that includes either a reversionary clause or contingency clause relating to "if living" as they are impermissible. The WCJ further stated that parties needed to either resolve the case by way of a Stipulations with Request for Award, a C&R for indemnity only, remove all reversion and contingency clauses, or settle without a structure for the Medicare Set-Aside (MSA) monies.

In the Joint Petition, the parties contend, in relevant part, that both parties will suffer irreparable harm if the C&R is not approved and that the WCJ acted without or in excess of her power.

The WCJ issued a Report and Recommendation on Petition for Removal/Reconsideration (Report) recommending that the joint Petition be denied.

We have considered the allegations of the Petition and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons stated below, we will dismiss the joint Petition for Reconsideration, deny the joint Petition for Removal, and return this matter to the WCJ for further proceedings and decision.

FACTS

Applicant claimed that while employed by defendant as an admitting clerk, she sustained a specific injury on August 26, 2008 to the back, lower extremities, psyche, and body systems.

Parties proceeded with discovery. The parties selected Michael Took, M.D., to act as the panel qualified medical evaluator (PQME) in orthopedic surgery and Renee Rinaldi, M.D., to act as the PQME in rheumatology.

The parties resolved the matter by way of a C&R, and on October 17, 2024, defendant filed the C&R. The parties resolved the case for $200,000, and the terms of the C&R included establishment of a MSA account pursuant to a structured annuity that defendant purchased to fund the account.

On November 6, 2024, the WCJ issued an order suspending agreement, and stated that "[n]either the MSA nor the CMS [Centers for Medicare and Medicaid Services] approval of the MSA were included with the settlement documents; same is necessary."

On November 7, 2024, defendant filed the MSA and the CMS approval letter. In the approval letter dated March 13, 2024, CMS determined that $113,210 adequately considers Medicare's interests and that the Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) account must be funded by an initial deposit of $67,935 and subsequent equal payment of $3,018 over 15 years. Pursuant to the letter, parties initially included a MSA Allocation with the C&R which included language that "[u]pon the death of Barbora Acosta[,] any remaining principal in the MSA Account will revert 100% to Safety National Casualty Corporation." (MSA Allocation, March 21, 2024.) It also stated that beginning on July 3, 2025, applicant would be paid $3,018/year for 15 years, "if living."

The WCJ set the matter for a status conference which took place on January 14, 2025, and then continued to February 13, 2025.

On February 27, 2025, defendant filed an Amended C&R and MSA Allocation. In the Amended MSA Allocation, parties revised the language to note that "[u]pon the death of Barbara Acosta[,] any remaining principal in the MSA Account will revert 100% to the Estate of Barbara Acosta." (MSA Allocation, May 17, 2024.) However, it still included the language that beginning on July 3, 2025, applicant would be paid $3,018/year annually for 15 years, "if living." (*Id.*)

The case was set for a status conference on March 20, 2025, and again on May 8, 2025.

On May 9, 2025, the WCJ issued the First Amended OSA. The WCJ took the June 19, 2025 status conference off calendar pending the joint Petition that was filed by the parties on May 29, 2025.

DISCUSSION

I.

Preliminarily, former Labor section 5909[1] 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, 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 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 under the Events tab 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 June 25, 2025, and 60 days from the date of transmission is August 24, 2025, which is a Sunday. The next business day that is 60 days from the date of transmission is Monday, August 25, 2025. (See Cal. Code

[1] All section references are to the Labor Code, unless otherwise indicated.

Regs., tit. 8, § 10600(b).)[2] This decision was issued by or on August 25, 2025, so that we have timely acted on the petition as required by section 5909(a).

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. Section 5909(b)(2) provides that service of the Report shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on June 25, 2025, and the case was transmitted to the Appeals Board on June 25, 2025. 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 25, 2025.

II.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].)

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at p. 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'…"]; *Rymer*, *supra*, at p. 1180 ["[t]he term ['final'] does not

[2] 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.

include intermediate procedural orders or discovery orders"]; *Kramer*, *supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 4 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez*, *supra*; *Kleemann*, *supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Here, the First Amended OSA solely resolves an intermediate procedural or evidentiary issue. The Order does not represent a final order finally determining any substantive right or liability of any party, nor finally determining any threshold issue basic to applicant's right to benefit. The Order neither approved nor disapproved the C&R, rather, the Order set the issues presented for further hearing, thereby ensuring due process for all parties involved. Accordingly, it is not a "final" decision and we will, therefore, dismiss the parties' joint Petition for Reconsideration and treat it as a Petition for Removal.

In the instant case, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy. In the Order, the WCJ set the matter for a status conference. As discussed below, we agree that a status conference is appropriate upon return to the trial level. We understand that the parties' wish is for us to approve the C&R, but without a record, we are unable to evaluate the merits of the parties' contentions in the Petition for Removal with respect to the adequacy of the settlement.

III.

In the Report, the WCJ cites to the WCAB panel decision in *Villalpando v. Doherty Brothers* (March 21, 2017, ADJ599176, ADJ2396484, ADJ7950339) [2017 Cal. Wrk. Comp. P.D. LEXIS 142], as authority for her position that the WCAB has the authority to withhold approval of settlements involving MSAs inconsistent with public policy or legal mandates. (See Report, at

p. 5.) In *Villalpando*, a split panel opinion, the applicant filed a Petition for Reconsideration of the Joint Findings and Order, in which a WCJ denied his request to transfer the administration of his MSA Account from a professional administrator to himself. (*Villalpando v. Doherty Brothers*, *supra*, 2017 Cal. Wrk. Comp. P.D. LEXIS 142, *9.)[3]

Here, *Villalpando* is neither persuasive nor applicable given that the case currently before us does not involve similar legal issues. The instant case is still at the adequacy phase and no award has been issued. The only similarity we see in both cases is that they both involve MSAs. In *Villalpando*, unlike the instant case, the main issue was an issue of enforcement of an existing award under section 5804; that is, whether the WCAB has jurisdiction to allow a change of administration of applicant's MSA of a settlement that was already approved and finalized by an OACR on August 24, 2011. Here, the main issues involve whether the "if living" clause in the MSA Allocation is impermissible, and whether the C&R is adequate.

IV.

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].) 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.*) The essential elements of contract include the mutual consent of the parties. Thus, 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; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.) The plain language of a contract is the first step in determining the intent of the parties. (Civ. Code, §§ 1638, 1639.) The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage. (Civ. Code, § 1644.) A contract must be so interpreted

[3] Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers' compensation judges. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) While not binding, the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc).)

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; *TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27 (*TRB Investments*); *County of San Joaquin v. Workers' Compensation Appeals Bd.* (*Sepulveda*) (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

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.)

The WCJ's decision "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*).) An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall ". . . make and file findings upon all facts involved in the controversy[.]" (Lab. Code, § 5313; *Blackledge v. Bank of America*, *ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Hamilton*, *supra*, at 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Sections 5313 and 5815 require the WCJ to make determinations on all issues in controversy, to provide a statement of the reasons or grounds upon which those determinations were made, and to do so in a manner that is "expeditiously, inexpensively, and without encumbrance of any character." (Cal. Const., art. XIV, § 4; Lab. Code, §§ 5313, 5815.) The WCJ is required to "make and file findings upon all facts involved in the controversy and an award,

order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see also *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 v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].)

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].)

Here, in addition to the "if living" language in the MSA Allocation, the WCJ has raised additional concerns about the adequacy of the settlement. (Petition, at p. 2.) The WCJ notes that the parties have disclosed for the first time in their Petition that the permanent disability advances exceeded the total permanent disability value established by the medicals in the case. (*Id.*)

It is apparent that a status conference is necessary to address the concerns about adequacy and about the MSA. As appropriate, further proceedings may be needed for the WCJ to create a record and make a determination as to the adequacy of the settlement in its entirety. Once the parties proceed to a hearing, they will have an opportunity to create a record, raise all relevant issues, and submit evidence. Once a final order is issued, the parties can then seek reconsideration.

Accordingly, we dismiss the Petition for Reconsideration and deny the Petition for Removal.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED.**

IT IS FURTHER ORDERED that the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 25, 2025

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

BARBARA ACOSTA
EDWARD ORTEGA, ESQ.
WAI, CONNOR & HAMIDZADEH

JL/abs

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