

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ELIAS HERNANDEZ, *Applicant*

vs.

BLUE ARC ELECTRIC, INC.;
OHIO SECURITY INSURANCE COMPANY/LIBERTY MUTUAL, *Defendants*

Adjudication Number: ADJ16687708
San Francisco District Office

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

We have considered the allegations of the 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 stated in the WCJ's Report, which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

Former Labor Code¹ section 5909 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.

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

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 in Events 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 October 31, 2025 and 60 days from the date of transmission is December 30, 2025. This decision is issued by or on December 30, 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 and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on October 31, 2025, and the case was transmitted to the Appeals Board on October 31, 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 October 31, 2025.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 30, 2025

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

**ELIAS HERNANDEZ
SANTANA, VIERRA, STEVENSON & HARRIS
ROSSI DOMINGUEZ**

PAG/mt

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION AND
NOTICE OF TRANSMISSION TO WCAB.**

Lawrence Keller, Workers' Compensation Judge, hereby submits his report and recommendation on the Petition for Reconsideration filed herein.

I. INTRODUCTION

Unrepresented applicant Elians Hernandez seeks reconsideration of my September 23, 2025 Finding of Fact that the applicant had not shown good cause to set aside the March 13, 2025 Amended Order Approving the Compromise and Release in this matter. The applicant's verified Petition for Reconsideration was timely filed on October 17, 2025 (the 10/17/2025 Petition). The defendant did not file an Answer to the 10/17/2025 Petition.

II. CASE HISTORY

On March 12, 2025, this matter was set for an in-person expedited hearing. The applicant was present for the Expedited Hearing. In addition, Ivy Lachowicz¹ was present for defendant, Krista Clawson, Esq. was present for the employer, and interpreter Rosario Espinosa was also present. During the course of that hearing, the parties engaged in settlement discussions. For a period, the settlement discussions were aided by Judge Gorelick of the San Francisco District Office. I was the trial judge for the expedited hearing, and the settlement discussions were outside of my presence.

At the hearing, the parties entered into a Compromise and Release agreement, settling the applicant's case for \$97,010.00. After deductions for permanent disability advances and attorney fees, the remainder to the applicant was \$75,001.87. The Compromise and Release was signed by Ms. Lachowicz, Ms. Clawson, and Mr. Hernandez, as well as the interpreter Ms. Espinosa. There were also two witnesses to the agreement. After review of the available record and discussion with the parties, I determined that the settlement was adequate and approved it.

Due to an oversight on March 12, 2025, I failed to sign the Order Approving and handed the parties an unsigned Order Approving. After discovering this oversight, an Amended Order Approving the Compromise and Release was signed by myself on March 13, 2025, and served by the Board on all parties of record.

On April 11, 2025, the applicant filed a letter with the Board.² The letter expressed dissatisfaction with the settlement and requested additional money and asserting the settlement was not adequate. Included in the letter was a statement that, "Defense attorney at the time of the settlement were putting pressure on me." No Petition for Reconsideration of the Order Approving

¹ Ms. Lachowicz is a hearing representative and has consistently identified herself as such. However, during the July 15, 2025 hearing (discussed below) I mistakenly referred to her as an attorney.

² EAMS Doc ID 79062364. EAMS Doc identification numbers provided on those documents with common titles (such as typed or written letter) to avoid confusion and aid in locating documents in Filenet.

had been filed. I interpreted the applicant's letter of April 11, 2025 to be a Petition to Set Aside the Compromise and Release due to duress or undue influence. On May 8, 2025, I sent a letter to the parties indicating as much and setting the matter for a status conference.³

That status conference occurred remotely via Court Call on May 27, 2025. During the course of that hearing, which applicant telephoned in to, the applicant expressed that he was not prepared to proceed in a remote setting and requested an in-person hearing. I therefore set the matter for an in-person evidentiary hearing on July 15, 2025.

The July 15, 2025 hearing was set whether there was good cause to set aside the Amended Order Approving the Compromise and Release. Parties were instructed to be prepared to submit evidence on whether there was good cause to set aside for undue influence or duress.

III. EVIDENCE PRESENTED ON JULY 15, 2025

The applicant did not present any documentary exhibits but testified to several alleged specific acts by Ms. Lachowicz, hearing representative for defendant, on March 12, 2025, that he felt constituted undue influence or duress. First was that she told him that if his case did not settle, he would need to be evaluated by more Qualified Medical Evaluators (QME). (7/15/2025 Minutes of Hearing and Witness Statements (MOH/WS), p. 4, lines 21-25.) This in turn would result in the applicant having to spend more out of his own pocket because the defendant would not be paying benefits during this time. (*Id.* at p. 4, lines 25-28.) Mr. Hernandez expressed that he had been borrowing money to pay bills. (*Id.* at p. 5, lines 32-33.) He additionally alleged that the hearing representative for the defendant instructed him not to say that parts of his body were shrinking and placed her finger to her lips in a gesture for the applicant to keep quiet. (*Id.* at p. 5, lines 5-27.)

Mr. Hernandez also testified that statements by me, as the judge for the March 12, 2025 hearing, caused him to be afraid. (7/15/2025 MOH/WS, p. 5, lines 31-36; p. 6, lines 13-15.) Specifically, when the applicant asked about loans he has received, I explained to the applicant that he would need to repay those individuals. (*Id.* at p. 5, lines 31-34.) This scared the applicant because it meant he would have to pay his bills out of his own pocket if he did not settle. (*Id.* at p. 5, lines 35-36; p. 6, lines 13-22.)

The defendant's hearing representative denied the applicant's allegations. (7/15/2025 MOH/WS, p. 9, lines 19-21.) Defendant also presented copies of two checks representing payment on the Order Approving the Amended Compromise and Release, which were cashed by the applicant. (Defendant's Exhibit A.)

Judge Gorelick, who spoke with the parties about settlement on March 12, 2025, was asked to prepare a statement of his recollection of the events of that date. He issued a written statement on July 25, 2025 that was served on all parties of record.⁴ Although Judge Gorelick mistakenly referenced July 15, 2015 as the hearing date, his interactions with the parties were on March 12, 2025. Judge Gorelick did not recall anything relevant to whether there was undue influence.

³ EAMS Doc ID 79150025.

⁴ EAMS Doc ID 79401992.

IV. CONTENTIONS ON RECONSIDERATION

The applicant petitioned for reconsideration of my September 23, 2025 decision on the grounds that in this case there were many irregularities, he did not have any representation, and that he did not feel it was fair. (10/17/2025 Petition, p. 2⁵.) Several of the applicant's contentions involve issues outside the jurisdiction of the WCAB such as complaints involving his EDD benefits and complaints over his prior representation's actions during his deposition and possible conspiring with medical providers. (*Id.* at pp. 3-5.) The applicant expressed these frustrations and allegations at the July 15, 2025 hearing. (7/15/2025 MOH/WS, p. 2, lines 33.) Some of these issues may more properly be taken to EDD or the State Bar, and are not issues which can be addressed by the WCAB.

Regarding undue influence or duress, or more generally, undue pressure, the applicant contends that:

“I HAD SO MUCH PRESSURE ABOUT SITTLING THIS CASE MOSTLY FOR FINANCIAL ISSUES AS YOU CAN SEE THE INSURANCE CO. LIBERTY MUTUAL AND SDI USING THEIR DIRTY TRICKS TO CUT OFF, CANCEL MY TEMP.DASABILITY BENEFITS IN THREE OR MORE OCATIONS EVERY TIME IT WAS FOR ABOUT 2 MONTHS THEN MY BENEFITS WERE CUT DOWN BIGINING 2/9/24 FOR ABOUT 6 MONTHS SDI AND LIBERTY MUTUAL PAID ME ONLY THE TOTAL AMOUNT OF \$732.00 DOLLARS EVERY TWO WEEKS THAT'S WAY TOO LITTLE TO LIVE IN SAN FRANCISCO BAY AREA, AND FROM MONTH 08/24 TO ABOUT MARCH 15/25 I WAS LIVING WITH ZERO INCOME NO MONEY AT ALL THEREFORE I BORROWED MONEY TO PAV MY BILLS AND MY DAILY LIVING EXPENSES, WITH THE LITTLE SETTLEMENT MONEY THAT LIBERTY MUTUAL PAID ME I HAD TO PAV BACK MORE THEN \$30 .000 DOLLARS.

AT THE TIME OF THE SETTLEMENT IT WAS DIFICULT FOR ME TO UNDERSTAND THE SETTLEMENT DOCUMENTS, THE INTERPRETER WAS NOT PRESENT SHE LEFT THE COURT ROOM ABOUT 3 TIMES, SEEMED TO ME LIKE SHE WAS A LITTLE SICK BECAUSE SHE WAS SECRETLY COUGHING VERY OFTEN I, I'M TYPING THIS COURT APPEAL DOCUMENT WITH HELP OF ONE OF MY FRIENDS AND A DIGITAL DICCIONARV I'M NOT FLUENT IN THE ENGLISH LANGUAGE. PARTS OF MY BODY THAT I INJURED AT THE TIME OF THE ACCIDENT ON 01/14/22.

HEAD, NECK, UPPER,MID AND LOWER BACK, HIPS, ISSUES WITH MY PRIVATE PARTS, DOCTOR TARIQ MIRZA STATES BASED ON MRI AND CT SCAN THAT (MY BRAIN AND THORAX ARE SHRINKING).

⁵ The 10/17/2025 Petition contains a separator sheet, the Petition with 4 attached pages. Page references for the 10/17/2025 Petition are to the page number of the PDF as saved in FileNet.

I ALSO WANT TO MAKE CLEAR THAT: (132 A WRONG FULL TERMINATION IS A SEPARATE CLAIM AND SHOULD NOT BE INCLUDED IN THE REGULAR WORKER'S COMP. CASE)"

NOTE:

TAKING IN COUNT ALL THE BODY PARTS THAT I INJURED IN THIS ACCIDENT AS MENTIONED ABOVE SOME OF THOSE BODY PARTS ARE CRITICAL AS MY PRIVATE PARTS AND THE SHRINKAGE OF MY BRAIN COULD BE FATAL I MAY COLAPSE AND DIE AT ANY MOMENT.

(FOR ALL THE IRREGULARITIES IN THIS CASE CAUSED BY: ATTORNEYS, INSURANCE CO. SDI, SOME DOCTORS, SOME CLINICS STAFF, AND THE CRITICAL OF SOME OF MY BODY PARTS BADLY HURT IN THIS ACCIDENT, I KINDLY ASK THE JUDGE HAVING JURISDICTION IN THIS CASE. PLEASE RECONSIDER THIS CASE AND SETTLEMENT." (10/17/2025 Petition, p. 6.)

I read the applicant's contentions as continuing to assert that there he was under undue influence or duress at the time of settlement on March 12, 2025. Additionally, the applicant contends that the Compromise and Release was not adequate.

V. DISCUSSION

The appeals board has jurisdiction to "... rescind, alter, or amend any order, decision, or award" within 5 years where good cause is shown. (Labor Code §§ 5803, 5804.) In this case there was no Petition for Reconsideration of the March 13, 2025 Amended Order Approving Compromise and Release. However, I determined the applicant's letter of April 11, 2025, to be a petition to set aside the Amended Compromise and Release.

The burden lies with the applicant, Mr. Hernandez, to show good cause as to why the Amended Order Approving the Compromise and Release should be set aside. (Labor Code § 5705.) Good cause "... cannot consist of a mere change of opinion." (*Schroedel v. Workers Compensation Appeals Bd.* (1997) 62 Cal. Comp. Cases 1173, 1175 (writ denied); see also *Guillot v. SuperValu*, 2018 Cal. Wrk. Comp. P.D. LEXIS 310, *17-18.)

Good cause to set aside a Compromise and Release is well summarized in the panel decision of *Jackson (Marachelle) v. Door to Hope*, 2022 Cal. Wrk. Comp. P.D. LEXIS 237:

““Good cause” includes mutual mistake of fact, duress, fraud, undue influence, procedural irregularities, incompetency, or minority at the time of execution of the agreement, and depends largely upon the circumstances of each case. (*Johnson v. Workmen's Comp. Appeals Bd.* (1970) 2 Cal. 3d 964, 975 [35 Cal. Comp. Cases 362].) “To reopen for ‘good cause’ there must exist some ground, not within the knowledge of the [WCJ] at the time of making the former award or orders which render said original award or orders inequitable; this cannot be premised upon a mere change of opinion by the [WCJ].” (*Nicky Blair's Restaurant v. Workers' Comp. Appeals Bd.* (1980) 109 Cal. App. 3d 941, 955 [167 Cal. Rptr. 516, 45 Cal. Comp. Cases 876].) [*12] Absent a showing of good

cause, the Board is powerless to set aside the order. (*Fidelity & Casualty Co. v. Workers' Comp. Appeals Bd.* (1980) 103 Cal. App. 3d 1001, 1012 [163 Cal. Rptr. 339, 45 Cal. Comp. Cases 381].)” (*Jackson (Marachelle) v. Door to Hope*, 2022 Cal. Wrk. Comp. P.D. LEXIS 237, *11-12.)

The applicant makes allegations of a conspiracy between various participants in his case, including, but not limited to, medical providers, prior representatives, defendant employer, and defendant insurance carrier. The applicant had previously made such allegations. (See the applicant’s letter dated and filed February 24, 2025⁶ and the January 23, 2025 Declaration of Readiness to Proceed to Expedited Hearing.⁷) There was not evidence offered that corroborated the applicant’s testimony. I was not independently persuaded by the applicant’s testimony that there was a conspiracy or collusion between parties to undermine the applicant’s claim. Therefore, I do not find that these allegations to be sufficiently supported to establish procedural irregularities or fraud that would constitute good cause to set aside the Amended Order Approving the Compromise and Release.

In the recent panel decision of *Tindle v. Nu-Way Transportation Services Inc.*, 2025 Cal. Wrk. Comp. P.D. LEXIS 190, the Appeals Board affirmed the workers’ compensation judge’s decision setting aside an Order Approving a Compromise and Release due to insufficient medical information regarding the applicant’s medical condition at the time of settlement. In *Tindle*, a Compromise and Release was approved without a medical record having been filed. (*Id.* at p. 6.) However, there were medical reports in existence, including an MRI which had not been within the knowledge of the applicant’s attorney or the judge who approved the Compromise and Release. (*Id.* at pp. 10-11.) The confusion over the medical reporting created a mutual mistake, as well as conditions where the applicant was under undue influence of his attorney who was acting without knowledge of the medical facts. (*Id.* at pp. 13-15.) These facts, in addition to the fact that there was medical evidence not available to the judge at the time of the settlement approval, created good cause to set aside the Order Approving in *Tindle*.

In Mr. Hernandez’s case, it is acknowledged that there is not a permanent and stationary report. However, there is a January 24, 2023 report of Panel Qualified Medical Evaluator (PQME) Priyanka Ghosh, M.D.⁸, and a report from treating physician James Petros, M.D. No additional medical reporting has been filed by the applicant. In this case, unlike the situation in *Tindle*, there has been no new evidence presented that was not in my knowledge at the time the settlement was approved. Therefore, I do not find that there is good cause to set aside the Amended Order Approving due to new evidence made available since the settlement.

Regarding undue influence and duress at the time of settlement, California Civil Code section 1575 defines undue influence as follows:

⁶ EAMS DOC 1D 42521383.

⁷ EAMS Doc ID 78961642.

⁸ There is additionally a January 9, 2025 report of a missed PQME appointment that is devoid of discussion of the applicant’s condition. (EAMS Doc ID 78961642.)

“Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;
2. In taking an unfair advantage of another’s weakness of mind; or,
3. In taking a grossly oppressive and unfair advantage of another’s necessities or distress.”

The panel decision in *Maxwell v. Global Cash Card, Inc.*, 2022 Cal. Wrk. Comp. P.D. LEXIS 168, stated that, “The essential ingredient in establishing undue influence is the use of excessive pressure by a dominant person over a servient person resulting in the will of the servient person being overborne.” (*Id.* at pp. *5-6.) Cases which found there was not undue influence include *Jenkins v. Workers Compensation Appeals Bd.* (2000) 65 Cal. Comp. Cases 1323 (writ denied), where the applicant in that case was told that allegations of theft may be raised if the case was not settled. (*Ibid.*) In contrast, undue influence was found in the panel decision in *Jackson (Marachelle) v. Door to Hope*, 2022 Cal. Wrk. Comp. P.D. LEXIS 237, which found duress and undue influence exerted by the applicant’s attorney. In *Jackson*, the applicant alleged that her attorney pressured her into signing the Compromise and Release and falsely told the applicant that the Compromise and Release was her only option. (*Id.* at p. *4.)

In the case at issue, I do not find good cause to set aside the settlement due to undue influence or duress. Even accepting the applicant’s statements of the actions and comments made by the defendant’s hearing representative, and myself as the trial judge, as accurate, I do not find the statements and actions constitute undue influence or place the applicant in a state of duress at the time he was considering and signing the Compromise and Release.

The hearing representative for defendant telling the applicant he may need further evaluation if his case continued does not rise to the level of undue influence or could reasonably put the applicant under duress. The defendant’s statement that if the case continued, they would not be paying further benefits, may be an attempt to exert influence. However, that does not mean the influence was undue. It may be a factual statement. Similarly, a shushing gesture to the applicant does not constitute undue influence or put the applicant in a state of duress.

Similarly, when I stated to the applicant that he would need to pay back his creditors from his share of the settlement was not undue influence, but an accurate reflection of the terms of the settlement as it was presented for consideration. Therefore, these statements would not reasonably create undue influence on the applicant to settle his claim.

The pressure applicant felt regarding his financial condition was not undue influence within the meaning of California Civil Code section 1575 because it was not exerted by “one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.” Instead, it was a general pressure exerted by the situation in which the applicant had been placed by his industrial injury and the limits of the benefits provided in the California workers’ compensation system.

Instead, I find that the applicant is regretting or re-evaluating his decision to settle his case. However, that is not good cause to set aside the settlement. It would appear the applicant’s

frustration with the lack of support, whether real or perceived, in obtaining benefits outside of those provided by workers' compensation system, and general frustration with the workers' compensation system, are contributing to his regret. While the applicant may have been frustrated in obtaining a range of benefits after his injury, that frustration is not a basis to set aside the Compromise and Release.

Based on the discussion above, I did not find good cause to set aside the Amended Order Approving the Compromise and Release issued on March 13, 2025. I continue to believe that good cause to set aside the Amended Order Approving the Compromise and Release has not been shown by the applicant.

VI. RECOMMENDATION

For the foregoing reasons, I respectfully recommend that the applicant's Petition for Reconsideration, filed October 17, 2025, be DENIED. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

DATE: October 31, 2025

LAWRENCE A. KELLER
WORKERS' COMPENSATION LAW JUDGE