

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

ENELIA GARCIA, *Applicant*

vs.

**NORTHRIDGE HOSPITAL MEDICAL CENTER (DIGNITY HEALTH),
permissibly self-insured,
administered by SEDGWICK, *Defendants***

**Adjudication Numbers: ADJ10243805 ADJ10243806
Marina del Rey District Office**

**OPINION AND ORDERS
GRANTING PETITION FOR REMOVAL AND
DECISION AFTER REMOVAL (ADJ10243805)
AND
GRANTING PETITION FOR RECONSIDERATION AND
DECISION AFTER PETITION FOR RECONSIDERATION (ADJ10243806)**

In ADJ10243805, applicant seeks removal in response to the minute orders issued by a workers' compensation administrative law judge (WCJ) on September 4, 2025, setting the matter for a virtual trial and allowing defendant's claims adjuster to appear virtually. Applicant contends that the WCJ failed to create a record, failed to comply with the recent en banc decision in *Perez v. Chicago Dogs, Liberty Mutual Insurance Company, et al.* (2025) (ADJ16597333) 90 Cal.Comp.Cases __ (*Chicago Dogs*), and failed to comply with WCAB Rules 10817(a), 10618(a) and 10510 (Cal. Code Regs., tit. 8, §§ 10817(a), 10618(a), 10510).

In ADJ10243806, applicant seeks reconsideration of the Findings and Order (F&O) issued on July 16, 2025 by the WCJ, wherein the WCJ found in pertinent part that: based upon the on the Stipulations and Award dated March 26, 2019 and the Findings & Award issued by WCJ Walker on June 15, 2022, and on the medical report of Dr. Newton, that there is not good cause to reopen, and there is no new and further disability; and that based on the Stipulations and Award, permanent disability remains at 15%, and the occupational code of 390 found in the Findings and Award has no force and effect as there is no new and further disability to which it would apply pursuant to panel qualified medical evaluator (PQME) Dr. Newton's report dated May 16, 2023. Applicant

contends that there was good cause to reopen; that the June 15, 2022 finding of an occupational code of 390 is binding; and that there is new and further disability once the current medical reporting is rated using the occupational code of 390.

We received a Response to Petition for Reconsideration from defendant, alleging the Petition for Removal and Petition for Reconsideration be dismissed/denied for failure of proper service on defendant.

We received a Report and Recommendation (Report) from the WCJ for each Petition, which recommend that each of the Petitions be denied.

We have reviewed the record and considered the allegations of the Petitions, Response, and the contents of the Reports. Based on our review, and as discussed herein, we grant both Petitions, rescind the minute orders of September 4, 2025 and the F&O of July 16, 2025, and return the matters to the WCJ for further proceedings consistent with this opinion.

FACTS

With respect to the factual background in ADJ10243805, the WCJ stated in her Report that:

This case involves a 1/19/2015, knee injury that was resolved via Stipulations with Request for Award for 35% PD. The Award was signed by Judge Walker on 3/26/2019. The matter is currently before the Board on the issue of sanctions and penalties due to alleged untimely delays in providing the Applicant with a wheelchair. At this point in time, the wheelchair has been provided. Applicant has filed a timely Petition for Removal requesting the WCAB reverse the WCJ's Order that the next Trial date for 10/27/2025, be set on a remote basis. No response has yet been filed by the Defendant. This matter was set for Trial on 9/3/2025. The Trial was continued at the request of Applicant's Attorney based on late notice of Trial. The Defendant's Attorney objected. When the WCJ indicated that the Trial would be continued on Applicant's motion, the Defendant requested the Trial be held virtually because his witness, Brett Downum, who was physically present on 9/3/2025, resided in Northern California. The undersigned ordered the next Trial be held virtually on these grounds. Subsequent thereto, the Applicant filed a timely Petition for Removal of the Interlocutory Order that the Trial now set for 10/27/2025, be held virtually.

(Report, p. 2.)

With respect to the factual background in ADJ10243806, the WCJ stated in her Report that:

The Petitioner sustained an industrial injury to her right knee on 12/17/2025, and the case resolved via Stipulations with Request for Award and Award on 3/26/2019. The Stipulations/Award was for 26% permanent disability based upon the medical reports of AME Dr. Peter Newton dated 6/6/2018. On 1/23/2020, the Applicant filed a timely Petition to Reopen for New and Further Disability/Good Cause pursuant to Labor Code Section 5410 and 5803. The Petition indicated that the Applicant's condition had worsened resulting in additional permanent disability and ongoing need for medical treatment.

On 3/30/2022, a trial took place before Judge Walker on the issues of permanent disability, apportionment, occupational group number, new and further disability, and attorney's fees. Judge Walker issued a Findings of Fact and Development of the Record on 6/15/22, finding that the occupational group number is 390, based on the Applicant's testimony at trial, and removed from submission the issues of permanent disability, petition for new and further disability and attorney's fees, and ordered the development of the record in the form of supplemental reporting from AME Dr. Peter Newton. Subsequent thereto, Judge Walker retired. AME Dr. Newton thereafter issued two reports on 1/10/2023 and 5/16/2023, wherein he found the Applicant had no new and further disability and remained at 15% WPI. The case was then set for trial with the undersigned on the issues of Permanent Disability; Good Cause to Reopen, New and Further Disability, and Attorney's Fees. The matter was submitted on 4/23/2025, a Findings and Order was issued on 7/16/2025, and a timely Petition for Reconsideration was filed by Applicant's Attorney on 7/24/2025.

(Report, p. 2.)

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

¹¹ Unless otherwise stated, all further statutory references are to the Labor Code.

(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 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 August 19, 2025, and 60 days from the date of transmission is Saturday, October 18, 2025. The next business day that is 60 days from the date of transmission is Monday, October 20, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, October 20, 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 by the WCJ, the Report was served on August 19, 2025, and the case was transmitted to the Appeals Board on August 19, 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 August 19, 2025.

II.

In our recent en banc decision in *Chicago Dogs, supra*, 90 Cal.Comp.Cases ___, we reiterated the following legal principles.

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.

As a matter of due process, all parties to a workers' compensation proceeding retain the 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].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) 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 pp. 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].) As stated by the Court of Appeal:

A denial of due process to a party ordinarily compels annulment of the Board's decision only if it is reasonably probable that, absent the procedural error, the party would have attained a more favorable result. However, if the denial of due process prevents a party from having a fair hearing, the denial of due process is reversible per se.

(*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd. (Pinkney)* (1994) 26 Cal.App.4th 789, 806 [59 Cal.Comp.Cases 461], citations omitted.)

It is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 [243 Cal. Rptr. 902] ("when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.)) This is particularly true in workers' compensation cases, where there is a constitutional mandate "to accomplish substantial justice in all cases." (Cal. Const., art. XIV, § 4.)

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).) The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp.*

Appeals Bd. (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Section 5701 allows the WCJ to “cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or . . . direct any employee claiming compensation to be examined by a regular physician.” (Lab. Code, § 5701; see also Lab. Code, § 5906 [permitting the Appeals Board to grant reconsideration and direct the taking of additional evidence].)

We first consider applicant's Petition for Removal in ADJ10243805.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 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).)

In *Chicago Dogs, supra*, 90 Cal.Comp.Cases ___, we held that:

In considering the application of WCAB Rule 10817[(a)], we preliminarily conclude that a request on the record for electronic witness testimony at the beginning of the hearing, with an opportunity for any party to respond, satisfies the petition requirement and is sufficient to adjudicate the issue of electronic testimony. Moreover, we preliminarily conclude that the due process right to a fair hearing and a determination based on the merits is good cause to allow the electronic testimony of the witness. Therefore, when a witness is unable to appear in person, as a matter of due process, a request to testify electronically should be readily permitted.

(*Id.* at p. 10.)

This means that in applying the principles articulated in *Chicago Dogs* in deciding whether an electronic hearing is appropriate (WCAB Rule 10815); an electronic appearance is appropriate

(WCAB Rule 10816); or electronic testimony by a party or third party witness is appropriate (WCAB Rule 10817), the WCJ must go on the record to consider the request so that there is an opportunity to be heard by the opposing party. Nonetheless, we reiterate that because access to proceedings is paramount as a matter of due process, which is in itself good cause, requests should be readily permitted.

Here, the orders for a virtual trial and for virtual testimony were only noted on the minutes, and no record was created as required by *Hamilton, supra*, and in *Chicago Dogs, supra*. Thus, we are persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner. Therefore, we must rescind the minute orders so that a record may be created.

Turning to applicant's Petition for Reconsideration in ADJ10243806, the case was submitted on the record. There is no evidence as to why the parties stipulated to occupational code 340 in the Stipulations, but then later stipulated to occupational code 390. The stipulation to occupational code 390 was the basis for the finding in WCJ Walker's decision.

The Appeals Board has continuing jurisdiction to "rescind, alter, or amend any order, decision, or award," if a petition is filed within five years of the date of injury and "good cause" to reopen is alleged and shown. (Lab. Code, §§ 5803, 5804.) An order approving compromise and release is an order that may be reopened for "good cause" under section 5803. Whether "good cause" exists to set aside a settlement 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. (Recinos)* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Workers' Comp. Appeals Bd. (Dowdle)* (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].)

Further, the "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).)

As a part of our inquiry, 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].) Thus, for a compromise and release agreement to be effective, the necessary elements of a contract must exist including an offer and an acceptance. (*Id.*) The essential elements of a contract include mutual consent and consideration. (Civ. Code, §§ 1550, 1565, 1580, 1584, 1595, 1605, et seq.) 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.) Pursuant to case law and section 1636 of the Civil Code, a contract must be so 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; *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].)

Here, the WCJ must first create a record and determine the preliminary issue of whether the stipulation to occupational code 340 in the Stipulations should be set aside. Then, it may be that the WCJ must admit additional evidence to consider the later stipulation to occupational code 390, in order to determine the effect of the finding by WCJ Walker of 390, and whether it was a valid finding. At this juncture, because of these underlying issues, we cannot determine whether there was a proper basis to reopen the case. Therefore, we rescind the F&O in its entirety.

Accordingly, we grant the Petition for Removal in ADJ10243805 and rescind the September 4, 2025 minute orders, and we grant the Petition for Reconsideration in ADJ10243806, and rescind the July 16, 2025 F&O. We return the matters to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal of the September 4, 2025 minute orders in ADJ10243805 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Removal of the Workers' Compensation Appeals Board, that the September 4, 2025 minute orders in ADJ10243805 are **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

IT IS FURTHER ORDERED that applicant's Petition for Reconsideration of the July 16, 2025 F&O in ADJ10243806 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 16, 2025 F&O in ADJ10243806 is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 20, 2025

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

**ENELIA GARCIA
BERKOWITZ AND COHEN
LUNA, LEVERING & HOLMES**

AS/mc

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