WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RICHARD PERKINS, *Applicant*

vs.

QUALITY BUILT, INC.;
ACE AMERICAN INSURANCE COMPANY,
administered by SEDGWICK CMS, *Defendants*

Adjudication Number: ADJ12417985
Lodi District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant's attorney seeks reconsideration of the Order Approving Compromise and Release (OACR) that was issued by the workers' compensation administrative law judge (WCJ) on August 10, 2026.

Applicant's attorney requests that the WCJ amend the OACR to expressly not include the issue of litigation costs for which he previously filed a Petition for Costs on May 14, 2024. In his Petition for Costs, applicant's attorney requested an Order for reimbursement of out-of-pocket litigation expenses totaling $6,610.00 for a Functional Capacity Evaluation and a Vocational Expert fee.

We have received an Answer from defendant.

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

We have considered the allegations of the Petition and the Answer, and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration to strike references to Labor Code section 5710[1] fees and section 5811 costs

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

in page 7 of the C&R and page 1 of the Addendum to C&R. We defer any issues related to section 5710 fees and section 5811 costs but otherwise affirm the OACR issued on August 10, 2026.

FACTS

Pursuant to the WCJ's Report, the relevant facts are as follows:

> Applicant sustained an admitted industrial injury to the lumbar spine, left knee, left ankle, and coccyx on October 25, 2018 while working as a building inspector for Quality Built, Inc./Insperity per the Pre-Trial Conference Statement dated July 6, 2026. The parties set the matter for trial on the issues of permanent disability, apportionment, occupation and group number, and attorney fee. On the day of trial, the parties were ultimately able to reach a Compromise & Release agreement for $180,000 new money. As part of the settlement agreement, Defendant agreed to waive $33,474.29 in permanent disability advances. Given an estimated permanent disability range between 34% and 51% without vocational expert testimony ($46,110.00 and $80,982.50), and a CMS approved MSA amount of $100,251.00 the settlement was deemed adequate by this WCJ. An Order Approving Compromise & Release was prepared by this Judge at the trial hearing approving the $180,000 new money Compromise & Release agreement with deductions of $100,251.00 payable to the Applicant to fund the CMS approved MSA and $27,000 to Eason & Tambornini as an attorney fee on the Compromise & Release amount, leaving a balance of $52,749.00 to the Applicant.

(Report, at p. 2.)

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, which states 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 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 September 10, 2026, and 60 days from the date of transmission is November 9, 2026. This decision is issued by or on November 9, 2026, 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 be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on September 10, 2026, and the case was transmitted to the Appeals Board on September 10, 2026. 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 September 10, 2026.

II.

It is recognized that "[t]he appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] ... At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order. decision, or award, good cause appearing therefor." (Lab. Code, § 5803.)

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).) We observe that contract principles apply to settlements of workers' compensation disputes. Stipulations between the parties must be interpreted to give effect to the mutual intention of the

parties it existed at the time of contracting, so far as the same is ascertainable and lawful. (*County of San Joaquin v. Workers' Compensation Appeals Bd.* (*Sepulveda*) (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193], citing Civ. Code, § 1636.)

Here, defendant seeks to enforce the OACR while applicant's attorney requests it be amended to expressly not include any litigation costs incurred in the case. Adequacy of a C&R is determined as to compensation that is owed to the applicant and as a matter of law, section 5710 fees and section 5811 costs are not part of that determination. That is, section 5710 fees and section 5811 costs should not be a part of the C&R as it is a contract between applicant and defendant, and applicant's attorney is not a party to the contract. Defendant's bargained for promise in the agreement to pay compensation to applicant is based on potential benefits to be paid to applicant; it could not have paid compensation to applicant in exchange for including section 5710 fees or section 5811 costs in the C&R. Thus, defendant has no basis to enforce the current C&R as against applicant's attorney, and as section 5710 fees and 5811 costs are separately owed to applicant's attorney, and not applicant, there must be a separate agreement between applicant's attorney and defendant in order to have an enforceable agreement. Therefore, we strike the references to section 5710 fees and section 5811 costs on page 7 of the C&R as well as on page 1 of the Addendum to C&R.

Accordingly, we grant applicant's Petition for the limited purpose of striking the references to section 5710 fees and section 5811 costs on page 7 of the C&R and page 1 of the Addendum to C&R. We defer the issues of whether applicant's attorney is entitled to reimbursement for any section 5811 costs and/or section 5710 fees, so that the issues may be adjudicated in the first instance. We otherwise affirm the WCJ's OACR.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Order Approving Compromise and Release issued on August 10, 2026 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order Approving Compromise and Release issued by the WCJ on August 10, 2026 is **AFFIRMED** but references to Labor Code section 5710 fees and Labor Code section 5811 costs in page 7 of the Compromise and Release and page 1 of the Addendum to Compromise and Release are **STRICKEN**.

IT IS FURTHER ORDERED that the issue of defendant's liability to applicant's attorneys for payment of Labor Code section 5710 fees and Labor Code section 5811 costs is **DEFERRED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 5, 2026

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

RICHARD PERKINS
EASON & TAMBORNINI
COLEMAN CHAVEZ & ASSOCIATES

JL/abs

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