

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

**ROBYN JOHNSTON, *Applicant***

**vs.**

**THE PERMANENTE MEDICAL GROUP, permissibly self-insured,  
administered by ATHENS ADMINISTRATORS;  
SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ12027044  
Oakland District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Order Approving Compromise and Release (OAC&R) issued by the workers' compensation administrative law judge (WCJ) and served on March 21, 2026.

Defendant contends that “[a]pplicant’s attorney made a unilateral mistake of contract interpretation and that the ‘new’ attorney’s fees owed is \$4,415.26.”

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

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and as discussed below, we will deny the Petition. Upon this matter’s return to the trial level, the WCJ may consider the issue of sanctions and/or penalties.

**FACTUAL BACKGROUND**

As summarized by the WCJ in the Report, the facts include the following:

APPLICANT, Robyn Johnston, born [], sustained injury arising out of and in the course of said employment during the period of February 4, 2018 to February 4, 2019. The parts of body injured were the BILATERAL SHOULDERS and BILATERAL WRISTS.

Parties previously resolved Stipulations with Request for Award for 71% (EAMS DOC ID 49577308), for which an Award was issued by Workers' Compensation Judge Therese Da Silva on December 22, 2023. (EAMS DOC ID 77478699).

On March 9, 2026 Defendant's filed a Compromise and Release resolving Applicant's remaining Permanent Disability and Life Pension and Future Medical. (EAMS DOC ID 77478699). On March 20, 2026 the Compromise and Release was reviewed for adequacy and an Order Approving Compromise and Release (hereinafter referenced as "OACR") was signed and served by the undersigned. (EAMS DOC ID 80163777).

(Report, 4/22/26, at pp. 1-2.)

By the terms of the Stipulations with Request for Award (Stipulations), as relevant here, applicant's injury was found to cause 71% permanent disability, payable at the rate of \$290.00 per week beginning November 18, 2020, in the sum of \$130,282.50, less credits for such payments previously made, and a life pension of \$85.04 per week thereafter. (Stipulations, December 18, 2023, p. 6, Item 3.) Applicant's attorney requested a fee of \$19,542.37, representing 15% of \$130,282.50, and applicant's attorney reserved the right to claim a future attorney fee from the life pension payments. (Stipulations, December 18, 2023, p. 6, Item 6.)

By the terms of the Compromise and Release (C&R), as relevant here, the parties settled applicant's claim for \$290,000.00. Of the total amount, \$75,980.00 was deducted for permanent disability advances through November 25, 2025; \$70,511.00 was payable to applicant for self-administered MSA; and \$23,957.63 was requested for attorney's fees, leaving applicant a balance of \$119,551.37. (C&R, p. 6, Item 7.) Next to the line identifying the amount of applicant's attorney fees is a handwritten annotation stating, "15% of \$290,000.00 minus \$19,542.37 fee paid via previous stips." (C&R, p. 6, Item 7.)

The WCJ's Report summarized the following additional facts:

Parties would appear before myself on March 26, 2026 for an Informal Conference at the Defendant's request in order to discuss an alleged dispute as to the interpretation to the language of the Compromise and Release and the Attorney Fees owed. Pursuant to the Minutes of Hearing from the March 26, 2026 Informal Hearing:

*Parties appeared at informal conference on 3/26/2026 to discuss an alleged dispute on interpretation of language in the C&R approved by the Board on 3/20/2026. At issue is the value of attorneys fees payable to AA pursuant to the terms of the C&R. Fill dispute*

*resolution could not be reached by the parties. Pursuant to discussion between the parties and the judge, the following was agreed to: 1) Defendant to timely pay the amounts owed to Applicant as set forth in Paragraph 7 of the C&R; 2) Defendant to timely pay the undisputed amount of attorneys fees owed to AA pursuant to the C&R, which is \$4,415.26 (\$23,957.63-\$19,542.37); 3) Defendant to file a Petition for Reconsideration on the issue of amount of attorneys fees owed to AA pursuant to the C&R.*

(Report, 4/22/26, at p. 2, emphasis in original.)

On April 29, 2026, applicant filed an Answer requesting defendant's Petition be denied. Applicant indicated the terms of the C&R at page 6 unequivocally set forth the mathematical calculation as to disbursement of settlement funds and should be found binding upon defendant. Applicant also requested that sanctions and applicant's attorney's costs and fees under Labor Code section 5813 be issued against defendant.

## DISCUSSION

### I.

Former 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.

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 April 22, 2026 and 60 days from the date of transmission is Sunday, June 21, 2026. The next business day that is 60 days from the date of transmission is Monday, June 22, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>1</sup> This decision is issued by or on Monday, June 22, 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 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 April 22, 2026, and the case was transmitted to the Appeals Board on April 22, 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 April 22, 2026.

## II.

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 shown. (Lab. Code, §§ 5803, 5804.) An OACR is an order that may be reopened for “good cause” under section 5803. “Good cause” includes fraud, duress, undue influence, mutual mistake of fact, mistake of law, invalidity of execution, incompetency, or minority at the time of execution of the agreement. (See *Argonaut Ins. Exch. v. I.A.C.* (1958) 49 Cal.2d 706 [23 Cal.Comp.Cases 34]; *Smith v. Workers’ Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160 [50 Cal.Comp.Cases 311]; *Carmichael v. I.A.C.* (1965) 234 Cal.App.2d 311 [30 Cal.Comp.Cases

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<sup>1</sup> 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.

169]; *Silva v. Industrial Acc. Com.* (1924) 68 Cal. App. 510 [11 IAC 266]; *City of Beverly Hills v. Workers' Comp. Appeals Bd.* (1997) 62 Cal.Comp.Cases 1691 (writ den.); *Bullocks, Inc. v. I.A.C.* (1951) 16 Cal.Comp.Cases 253 (writ den.); *Pac. Indem. Co. v. I.A.C.* (1946) 11 Cal.Comp.Cases 117 (writ den.) Whether good cause exists is case specific. The circumstances surrounding the execution and approval of the agreement must be assessed. (See Lab. Code, § 5702; *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118-1121 [65 Cal.Comp.Cases 1]; *Robinson v. Workers' Comp. Appeals Bd.* (1987) 199 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].)

Further, “[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).)

As part of our inquiry, we observe that contract principles apply to settlements of workers’ compensation disputes, and “[t]he 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 valid and enforceable, the elements of a contract must be satisfied, including offer of settlement and acceptance. (*Id.*)

“The language of a contract governs its interpretation, if the language is clear,” and that “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.” (*Id.* at p. 1184.)

We must “interpret a contract to give effect to the mutual intention of the parties at the time they formed the contract.” (*Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291, 306 [83 Cal.Comp.Cases 1014], citing Civ. Code, § 1636.) “We discern the parties’ intention based on the written contract alone, if possible, but may also consider the circumstances under which the contract was made and its subject matter ... We consider the contract as a whole, and interpret contested provisions in their context, not in isolation, with the aim of giving effect to all provisions, if doing so is reasonably possible. (*Ibid.*)

We agree with the WCJ’s analysis as to why the Petition should be denied:

Petitioner in their Petition for Reconsideration is not alleging any error or by the order, decision or award made and filed by the appeals board or a workers' compensation judge, the board acted without or in excess of its powers. There is no request to overturn an appeals board or workers' compensation judge's decision or order. Based on that fact the Petition for Reconsideration should be denied.

Secondly, what Petitioner seeks is for a judicial determination and/or judicial finding by the appeals board and/or workers' compensation judge as to the exact reading and meaning of the terms that the parties entered into in the Compromise and Release. Such a request is not a proper grounds for which a Petition for Reconsideration can be based on. Pursuant to Labor Code Section 5903, the only grounds that parties may seek reconsideration are the following:

*(a) That by the order, decision, or award made and filed by the appeals board or the workers' compensation judge, the appeals board acted without or in excess of its powers.*

*(b) That the order, decision, or award was procured by fraud.*

*(c) That the evidence does not justify the findings of fact.*

*(d) That the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.*

*(e) That the findings of fact do not support the order, decision, or award.*

Here what Petitioner is seeking does not meet any of those allowed under Labor Code Section 5903. What Petitioner should have done was file for an Mandatory Settlement Conference so that the matter can be set for a Trial and a proper record can be created and a Workers' Compensation Judge can make a determination as to the meaning and interpretation of the terms within the Compromise and Release. Again, for the foregoing reasons the Petition for Reconsideration must and should be denied.

(Report, 4/22/26, pp. 3-4, emphasis in original.)

Despite setting forth reasons why the Petition should be denied, the WCJ went on to recommend that the matter be remanded for the parties to meet and confer on these issues and for development of the record if necessary. (Report, April 22, 2026, p. 4, ¶ 4.) We disagree that further action at the trial level is warranted to interpret the terms of the C&R because the terms of the C&R on its face are unequivocally clear and do not offer room for an alternative interpretation as suggested by defendant.

Here, the WCJ evaluated the adequacy of the proposed settlement at the time it was submitted for review and approval. (Lab. Code, § 5001; Cal. Code Regs., tit. 8, § 10700(b).) The WCJ then issued the OAC&R, stating that “based on my review of all of the medical reports and records and other documents that have been filed (which are hereby admitted into evidence), I conclude that the settlement amount is adequate and that the Compromise and Release should be approved.” (OAC&R, 3/31/26.)

Defendant asserts that neither party contends or requests that the C&R be set aside, but defendant requests reconsideration on the sole issue of whether applicant’s attorney made a unilateral mistake of contract interpretation, such that the C&R entitled applicant’s attorney to only \$4,415.26 in “new” attorney’s fees rather than the \$23,957.63 set forth in the C&R. (Petition, April 14, 2026, p. 1, lines 24-27.) We find defendant’s calculations are unsupported. The plain language of the C&R called for a settlement amount of \$290,000.00 in new money. There is no indication that the settlement amount was meant to be offset by the prior Stipulations. Applicant’s attorney requested a fee of 15%, which of \$290,000.00 equals \$43,500.00 total. Applicant’s attorney was previously entitled to \$19,542.37 in fees by the terms of the Stipulations and allowed a credit from that award. The amount of \$43,500.00 less \$19,542.37 equals \$23,957.63, which is the attorney’s fees per the C&R. It is not plausible that applicant’s attorney would only be due \$4,415.26 because the calculations would not equate to the settlement amount of \$290,000.00. Moreover, even if applicant’s attorney’s fees were reduced, the money would increase the balance due to applicant, it would have no effect on the overall settlement amount of \$290,000.00.

Accordingly for the reasons stated herein, we deny the Petition for Reconsideration.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

I CONCUR,

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**ANNE SCHMITZ, DEPUTY COMMISSIONER**  
CONCURRING NOT SIGNING



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**JUNE 22, 2026**

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

**ROBYN JOHNSTON  
LAW OFFICE OF CRAIG W. MORRISON  
LAUGHLIN, FALBO, LEVY & MORESI  
OFFICE OF THE DIRECTOR – LEGAL UNIT**

***DC/pm***

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