WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

STUART BRAHAM, ***Applicant***

vs.

ANGELES NATIONAL GOLF CLUB; OAK RIVER INSURANCE COMPANY, administered by BERKSHIRE HATHAWAY PASADENA, ***Defendants***

Adjudication Number: ADJ21055490
Van Nuys District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION

Applicant filed a Petition for Reconsideration and Request to Set Aside and/or Amend the Compromise and Release and Order Approving the Compromise and Release (Petition) issued by the workers' compensation judge (WCJ) on July 14, 2026. Applicant contends that the Compromise and Release (C&R) included body parts that were not industrially injured and that this error might negatively impact his Medicare benefits.

We have not received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the 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, for the reasons discussed below, we dismiss the Petition for Reconsideration so that the WCJ can consider it as one to set aside the Order Approving.

FACTS

Applicant claimed industrial injury to his leg and back while working for defendant as a pro shop attendant on March 6, 2024, when he tripped and fell and fractured his left femur and injured his left leg and back, according to the Application for Adjudication filed on June 9, 2025.

Qualified Medical Evaluator (QME) Nahid Nazari, M.D., MPH, examined applicant and issued a report dated January 2, 2025, and a supplemental report dated February 28, 2025. In his February 28, 2025 report, Dr. Nazari identified permanent disability in applicant's hip and left femoral neck.

The parties filed the C&R on July 6, 2026, and the Order Approving Compromise and Release (OACR) issued on July 14, 2026. The C&R identified the back and leg as the settled body parts.[1] In the Comments under Paragraph 9, it states that: "THIS SETTLEMENT IS BASED, IN PART, ON THE REPORTING OF DR. NAHID NAZAR[I]." Addendum B of the C&R included information about the Medicare Set Aside Allocation. The addendum states that the parties prepared a Medicare Set Aside (MSA) allocation that was attached to the settlement and incorporated. The addendum also stated that applicant desired to self-administer the MSA. (C&R, Addendum B & MSA letter, pp. 11, 13-17.)

Applicant filed the Petition on August 4, 2026, with an attached declaration from applicant.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code[2] 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.

[1] To the extent that the C&R identifies "back (420); leg (518); and leg (519)," those numeric codes are for the purposes of data collection by the Division of Workers' Compensation (DWC) and are not actual body parts that are resolved by the C&R.

[2] 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 August 10, 2026, and 60 days from the date of transmission is October 9, 2026. This decision is issued by or on October 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 August 10, 2026, and the case was transmitted to the Appeals Board on August 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 August 10, 2026.

II.

Applicant claims that only his left femur was an industrial injury but that the C&R erroneously included his back and other parts of his leg; and that the inclusion of his back and other parts of his leg in the C&R would detrimentally impact his Medicare benefits. Medicare may not pay for a beneficiary's medical expenses when payment "has been made or can reasonably be expected to be made under a workers' compensation plan." (42 U.S.C. § 1395y(b)(2); Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide, Version 4.4, dated July 14, 2025 (CMS Guide), p.2; see also *Alvarenga v. Scope Indus*. (2016) 81 Cal.Comp.Cases 850, 853.) A workers' compensation MSA allocates a portion of the workers' compensation settlement for all future work-injury-related medical expenses that are covered and otherwise

reimbursable by Medicare. (CMS Guide, p. 4.) Any claimant who receives a workers' compensation settlement, judgment, or award that "includes an amount for future medical expenses must take Medicare's interest with respect to future medicals into account." (*Id*.) Therefore, the legal duty of the parties and the WCAB is to consider Medicare's interests.

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.)

As we held in our recent en banc decision in *Gaines v. ABM Aviation* (2026) 91 Cal.Comp.Cases 613, 615 (Appeals Board en banc), "[a] workers' compensation settlement is only enforceable after approval by the Workers' Compensation Appeals Board. In approving a settlement, a WCJ must consider whether the agreement is valid and must determine whether the settlement is adequate in order to protect the injured worker and the public interest."

As we explained in *Gaines*, *supra*, "[i]t has long been held that a C&R must provide fair compensation to the injured worker equivalent to what the injured worker would expect to receive from an award. . ." (*Gaines v. ABM Aviation*, *supra*, 91 Cal.Comp.Cases.at p. 628, citing *Johnson v. Workmen's Comp. Appeals Bd*. (1970) 2 Cal.3d 964, 973 [35 Cal.Comp.Cases 362]; see also, *Camacho v. Target* (2018) 24 Cal.App.5th 291, 301-302 [83 Cal.Comp.Cases 1014].) We further stated that: "[i]n addition to the protection of injured workers, another purpose of adequacy review is to protect the public interest." (*Gaines v. ABM Aviation*, *supra,* at p. 629, citing *Department of Rehabilitation v. Workers' Comp. Appeals Bd*. (2003) 30 Cal.4th 1281, 1286 [68 Cal.Comp.Cases 831] ["The purpose of an award is not to make the employee whole for the loss which he or she has suffered, but to prevent the employee and his or her dependents from becoming public charges during the period of disability."].) "Workers' compensation was created, in part, to prevent an injured worker from becoming a public ward." (*Gaines v. ABM Aviation*, *supra*, at p. 629, citing *Department of Rehabilitation v. Workers' Comp. Appeals Bd*., *supra*, at p. 1286.) "Where benefits

are due, they should be paid and the WCJ should ensure that payable benefits are not inappropriately shifted onto public systems, for example, Medicare, Medi-Cal, EDD, and Social Security. Adequacy review has the dual purpose of ensuring that an injured worker is appropriately paid benefits, which in turn benefits the public." (*Gaines v. ABM Aviation*, *supra,*at p. 629.) Here, the medical reporting by QME Dr. Nazari does not support any injury to applicant's back, even though the back was identified as a body part that was settled by way of the C&R.

Additionally, there must be a complete record for our review of the case. "[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc).) The Appeals Board's record of proceedings is maintained in the adjudication file and consists of: "the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings." (Cal. Code Regs., tit. 8, § 10803.)

Finally, 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. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. I.A.C.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].)

The OACR issued without a hearing on the matter. Because no hearing was held by the WCJ, the WCJ did not have the opportunity to assess the basis of the parties' understanding of the C&R nor the impact on applicant's Medicare benefits. There is no Minutes of Hearing or Statement of Evidence in the record. Although the WCJ made a general statement in the OACR that "all medical records and reports are taken into evidence at this time," and medical reporting was submitted pursuant to WCAB Rule 10700(a) (Cal. Code Regs., tit. 8, § 10700(a)), there is no other

admitted medical evidence. Therefore, we cannot make a decision without giving the parties an opportunity to be heard and for the WCJ to create a complete record for our review.

Accordingly, we will dismiss the Petition as premature and return this matter to the trial level. Upon return of this matter to the trial level, we recommend that the WCJ consider applicant's request to set aside and/or amend the C&R and OACR and set a hearing so the parties can provide evidence regarding the inclusion of various body parts in the C&R and any other relevant issues and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 8, 2026

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

STUART BRAHAM
LAW OFFICES OF JOAN LAURICELLA
LOWER & KESNER, LLP

JMR/pm

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