

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

**ABDUL NAWABI, *Applicant***

**vs.**

**CYPRESS INSURANCE COMPANY, administered by BERKSHIRE HATHAWAY  
HOMESTATE COMPANIES for its insured  
TRI CITY ECONOMIC DEVELOP CORPORATION, *Defendants***

**Adjudication Numbers: ADJ12007786; ADJ12164251  
Oakland District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Applicant, through an individual by the name of S. Yvonne Bailey,<sup>1</sup> has filed a 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 below, we will dismiss the Petition for Reconsideration as premature. We will then return this matter to the trial level for the WCJ set a status conference to determine whether further proceedings are necessary as discussed below.

Subject to the limitations of Labor Code<sup>2</sup> section 5804, "[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.)

We observe that contract principles apply to settlements of workers' compensation disputes. The legal principles governing compromise and release agreements, and by extension, stipulations with request for award, are the same as those governing other contracts. (*Burbank*

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<sup>1</sup> S. Yvonne Bailey has not filed a Notice of Representation as required by WCAB Rule 10400. (Cal. Code Regs., tit. 8, § 10400.)

<sup>2</sup> All further statutory references are to the Labor Code, unless otherwise noted.

*Studios v. Workers' Co. Appeals Bd. (Yount)* (1982) 134 Cal.App.3d 929, 935 [47 Cal.Comp.Cases 832].) 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]; Civ. Code, § 1636.)

A stipulation is “‘An agreement between opposing counsel ... ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,’ (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves ‘to obviate need for proof or to narrow range of litigable issues’ (Black’s Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding.” (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) Stipulations are binding on the parties, however the parties may be permitted to withdraw from their stipulations upon a showing of good cause. (*Id.*, at 1121.)

“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).) Moreover, the WCJ has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924].)

A decision “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), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351]), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

Section 5313 provides:

The appeals board or the workers’ compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the

controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

(Lab. Code, § 5313.)

As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 478; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22 (Appeals Board en banc).)

The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision....” (*Hamilton, supra*, at p. 476.) The Court of Appeal has further observed that pursuant to Labor Code section 5908.5, decisions of the Appeals Board must state the evidence relied upon and specify in detail the reasons for the decision. (*Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351] (Evans).) The purpose of the requirement is “to assist the reviewing court to ascertain the principles relied upon by the lower tribunal, to help that tribunal avoid careless or arbitrary action, and to make the right of appeal or of seeking review more meaningful.” (*Evans, supra*, at p. 755.)

Here, in the absence of a record, we are unable to evaluate Petitioner’s contentions. 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. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 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].)

Accordingly, we dismiss the Petition as premature and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend that the WCJ determine the relationship between applicant and S. Yvonne Bailey,

determine whether applicant's petition should be treated as a petition to set aside the prior settlement and/or a petition to enforce, whether the prior order relieving applicant's former attorney needs to be reevaluated, and, if appropriate, set a hearing to allow the parties to provide evidence and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, any aggrieved person 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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**SEPTEMBER 15, 2023**

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

**ABDUL NAWABI  
ELITE COMP LAW  
MULLEN & FILIPPI**

**PAG/cs**

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