

CASE ID: ADJ7763837  
(12517007-0243-4830-9839-404257955187)

STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board

Case No. ADJ7763837

ANTHONY DORSETT,

*Applicant,*

vs.

DALLAS COWBOYS;  
TRAVELERS INSURANCE COMPANY;  
DENVER BRONCOS,  
Permissibly Self-Insured,

*Defendants.*

**FINDINGS AND ORDER**

**COUNSEL-** Namanny, Byrne & Owens  
By: Mel Owens  
Attorney for Applicant

Peterson, Colantoni, Collins & Davis, LLP  
By: Joshua J. Roberts  
Attorney for Defendant

The above entitled matter having been heard and regularly submitted, the Honorable Theodore Cornforth, Workers' Compensation Administrative Law Judge, now decides as follows:

**FINDINGS OF FACT**

It is found that the Compromise and Release and the Order Approving Compromise and Release dated 9/24/91 in case number ADJ4142902 (91 ANA0242423) is Res Judicata. Applicant is barred from proceeding further action in case number ADJ7763837.

CASE ID: ADJ7763837  
(JAS770F7-0265-4B5D-9239-40425F9351E7)

**ORDER**

IT IS HEREBY ORDERED that the matter is Res Judicata and all other issues are moot.



DATE: 5/17/13

Theodore Cornforth  
workers' compensation  
administrative law judge

**SERVED ON PARTIES LISTED  
BELOW:**

ON: 5/17/2013

  
BY: S. Carino

ANTHONY DORSETT  FRISCO TX 

NAMANNY BYRNE 24411 RIDGE ROUTE DR STE 135 LAGUNA HILLS CA 92653  
LAGUNA HILLS

PETERSON 555 CORPORATE DR STE 205 LADERA RANCH CA 92694,  
COLANTONI LADERA RSERNEELS@PCLLP.NET  
RANCH

STEPHEN WEISS, M.D. 999 N TUSTIN AVE STE 212 SANTA ANA CA 92705

CASE ID: ADJ7763837  
{81C8C613-2B0D-4849-AE09-0FE812DE5F3D}

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

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**ANTHONY DORSETT,**  
*Applicant,*  
  
*vs.*  
  
**DENVER BRONCOS; DALLAS COWBOYS;  
TRAVELERS INSURANCE COMPANY,**  
  
*Defendants.*

**Case No. ADJ7763837**  
**(Anaheim District Office)**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the May 17, 2013 Findings and Order of the workers' compensation administrative law judge (WCJ), who found that the compromise and release entered into by applicant in ADJ4142902 (ANA 0242433) as approved by order of a different WCJ on September 24, 1991, is "Res Judicata" and applicant is "barred from proceeding further" in this case. In both cases, applicant claimed he incurred industrial injury to several body parts while employed by defendants from 1977 to 1989 as a professional football player.

Applicant contends that the compromise and release agreement in ADJ4142902 does not bar him from proceeding in this case because the claim in this case involves an alleged industrial injury to his brain and neurological system that was not released as part of the earlier settlement.

An Answer was received from defendant Denver Broncos (Broncos). The WCJ retired after the May 17, 2013 decision issued, and he was not available to provide a Report and Recommendation on Petition for Reconsideration.

Reconsideration is denied. Applicant's claim is barred by the release he provided defendant as part of the September 24, 1991 compromise and release in ADJ4142902.

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**BACKGROUND**

1  
2 Applicant was employed first by the Dallas Cowboys (Cowboys) and then by the Broncos as a  
3 professional football player from 1977 to 1989. In 1991 he filed a claim of cumulative injury to multiple  
4 body parts while in that employ (ADJ4142902). On September 24, 1991, a WCJ entered an order  
5 approving a compromise and release agreement made by applicant, the Cowboys and the Broncos to  
6 settle applicant's claim of cumulative industrial injury for a lump sum payment of \$85,000. Under the  
7 terms of the compromise and release agreement, a copy of which is attached to the Bronco's Answer, the  
8 settlement covered "multiple orthopaedic body parts as per medical reports on file herein," with an  
9 additional handwritten listing of the "neck, back, both lower extremities, both upper extremities, head,  
10 spine, internal, and for other parts of body referred to on medicals on file."<sup>1</sup>

11 On April 11, 2011, applicant filed his claim in this case (ADJ7763837). On the Application for  
12 Adjudication of Claim (Application), applicant identifies the same defendants, the same employment and  
13 the same cumulative period as in ADJ4142902. He also lists essentially the same body parts, including  
14 the "head," neck, upper extremities, and leg. However, the earlier claim in ADJ4142902 is not included  
15 in paragraph 8 of the Application in ADJ7763837 where the employee is to list other workers'  
16 compensation cases he has filed.

17 According to the papers filed by the parties, applicant's attorney advised defendant of the earlier  
18 settled claim in ADJ4142902 shortly before applicant's deposition was to be taken in this case. The  
19 effect of the earlier settlement on the pending claim was considered by the WCJ at a hearing on  
20 March 26, 2013. At that time the WCJ took judicial notice of the Application in ADJ4142902, and the  
21 September 24, 1991 compromise and release agreement and order approving it. Applicant testified that  
22 he did not recall the earlier claim and settlement in ADJ4142902, but acknowledged that it was his  
23 signature on the Application and compromise and release in that case. Following the hearing, the WCJ  
24 issued his May 17, 2013 decision as described above.

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26  
27 <sup>1</sup> Because of the passage of time, the WCAB file in ADJ4142902 was destroyed and the medical reports referenced in the  
September 24, 1991 compromise and release were not available to the WCJ.

DISCUSSION

1  
2 Applicant argues that his claim in ADJ7763837 should not be barred because it alleges  
3 "psychological or neuropsychological injuries, including post-concussion syndrome" that were not  
4 covered by the earlier compromise and release in ADJ4142902, and were unknown at that time. The  
5 record does not support applicant's contention that ADJ7763837 involves a new injury claim.

6 This is not a case where the compromise and release in ADJ4142902 can be set aside for good  
7 cause because the September 24, 1991 order approving the parties' agreement is a form of final judgment  
8 that is subject to the five year jurisdictional limit contained in Labor Code section 5804, and there has  
9 been no showing of extrinsic fraud or mistake that would allow reopening.<sup>2</sup> (*Brunski v. Industrial Acc.*  
10 *Com.* (1928) 203 Cal. 761 [15 I.A.C. 128]; *Johnson v. Workmen's Comp. App. Bd.* (1970) 2 Cal.3d 964  
11 [35 Cal.Comp.Cases 362] ["An approved workers' compensation compromise and release rests 'upon a  
12 higher plane than a private contractual release; it is a judgment, with the same force and effect as an  
13 award made after a full hearing.'"]; *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160  
14 [50 Cal.Comp.Cases 311].) An order approving a compromise and release will not be set aside merely  
15 because the ultimate level of permanent disability caused by the injury later exceeds what was predicted  
16 at the time the order issued. (*Johnson v. Industrial Acc. Com.* (1945) 10 Cal.Comp.Cases 265 (writ  
17 den.))

18 In apparent recognition of the WCAB's lack of jurisdiction to set aside the earlier compromise  
19 and release, applicant argues that his claim in ADJ7763837 involves a different injury from the one  
20 released in ADJ4142902. That contention is not supported by the record.

21 As shown by the March 26, 2013 Minutes of Hearing (Minutes) applicant acknowledged during  
22 his testimony that he experienced numerous hits to the head and concussions during his years of  
23 employment as a professional football player. It is self-evident that applicant's "head" was specifically  
24

25 <sup>2</sup> Labor Code section 5804 provides in pertinent part as follows: "No award of compensation shall be rescinded, altered, or  
26 amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years  
27 and any counter petition seeking other relief filed by the adverse party within 30 days of the original petition raising issues in  
addition to those raised by such original petition."

1 identified as an injured body part in ADJ4142902 because of that history of hits to the head and  
2 concussions. It is also apparent that applicant's "head" is specifically listed in the compromise and  
3 release agreement as a released body part for the same reason. Under the compromise and release  
4 agreement, applicant expressly released defendants of *all* claims of injury concerning his head with the  
5 following language:

6            "[S]aid employee releases and forever discharges said employer and  
7 insurance carrier from *all claims and causes of action, whether now known  
8 or ascertained, or which may hereafter arise or develop as a result of said  
9 injury*, including any and all liability of said employer and said insurance  
10 carrier and each of them to the dependents, heirs executors, representatives,  
11 administrators or assigns of said employee." (Emphasis added.)

12            The earlier settlement in ADJ4142902 of "all claims" of injury to applicant's "head" includes the  
13 claim he now makes based upon the hits to the head and concussions he incurred in the course of his  
14 employment as a professional football player.

15            Applicant's reliance upon the holding in *General Dynamics Corp. v. Workers' Comp. Appeals*  
16 *Bd. (Anderson)* (1999) 71 Cal.App.4th 624 [64 Cal.Comp.Cases 515] (*Anderson*) is misplaced. In that  
17 case, the Court annulled the Appeals Board's decision that the applicant's subsequent claim of industrial  
18 injury in the form of asbestosis was not barred by the compromise and release settlement of her earlier  
19 claim of injury to her lungs. In concluding that the evidentiary record did not support the WCAB's  
20 decision that the asbestosis claim was not barred, the Court emphasized that "Asbestos related injuries  
21 are troublesome because of the progressive and latent nature of the disease," and that "More than one  
22 compensable injury may occur from exposure to asbestos..." (*Ibid.*, 71 Cal.App.4th at 629.) The case  
23 was returned to the WCAB for further proceedings on whether the subsequent claim was barred because  
24 the claimed injury was in existence at the time the earlier release was approved.

25            In this case, unlike in *Anderson*, there is no evidence that the claimed injury had not yet occurred  
26 at the time of the settlement. To the contrary, the March 26, 2013 Minutes document applicant's  
27 testimony that he knew he had suffered concussions when they occurred in the course of his employment,  
and that he experienced headaches as a result of hits to his head. Indeed, the only apparent reason for  
claiming injury to the "head" in ADJ4142902 was to address the effects of hits to the head and

1 concussions applicant incurred while employed as a football player. In short, the record shows applicant  
2 knew he had incurred injury to his head as a result of hits to his head and concussions when he filed his  
3 claim in ADJ4142902, and he knew or should have known that the compromise and release included a  
4 release of *all* claims for injury and disability caused by those hits to his head and concussions.


5 For the foregoing reasons,

6 **IT IS ORDERED** that applicant's Petition for Reconsideration of the May 17, 2013 Findings and  
7 Order of the workers' compensation administrative law judge is **DENIED**.

8 **WORKERS' COMPENSATION APPEALS BOARD**

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ALFONSO J. MORESI

12 I CONCUR,

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15 \_\_\_\_\_  
FRANK M. BRASS



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RONNIE G. CAPLANE

19 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

20 AUG 06 2013

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

- 23 ANTHONY DORSETT  
24 ARS LEGAL  
25 NAMANNY, BRYNE & OWENS  
26 PETERSON, COLANTONI, COLLINS & DAVIS  
27 STEPHEN WEISS, M.D.



JFS:mm