

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **MARIA MORALES,**

5 *Applicant,*

6
7 **vs.**

8 **UNIVERSAL FURNITURE; AMERICAN**
9 **HOME ASSURANCE COMPANY,**
10 **administered by AIG PROPERTY AND**
11 **CASUALTY,**

12 *Defendants.*

Case No. ADJ634371 (LAO 0817484)

OPINION AND DECISION
AFTER RECONSIDERATION

13 We granted reconsideration in order to further study the factual and legal issues in this case. This
14 is our Opinion and Decision After Reconsideration.

15 Defendant seeks reconsideration of the Opinion and Order Granting Petition for Reconsideration
16 and Decision After Reconsideration (Opinion) issued by the Appeals Board on September 25, 2017¹. In
17 the Opinion, the panel majority granted reconsideration and rescinded the June 30, 2017 Findings of Fact
18 issued by the workers' compensation administrative law judge (WCJ). The WCJ found that the
19 "Compromise and Release Agreement entered into on June 13, 2016 by AIG Property and Casualty
20 (AIG) resolves applicant's internal claim of injury in addition to all other claims of injury resolved by
21 that agreement" and that the "claims filed against AIG were fully resolved by the Order Approving
22 Compromise and Release dated June 13, 2016." By the Opinion, the Appeals Board also substituted a

23
24 ¹ WCAB Rule 10845 states that all documents filed in connection with a petition for reconsideration shall comply with the
25 requirements of the Rules of the Administrative Director, section 10205.12(a)(4), which states, "all non-form legal pleadings
26 shall contain a heading above the case caption containing the name of the filing attorney and their state bar membership
27 number and the attorney's law firm name and address." (Cal. Code Regs., tit. 8, § 10205.12(a)(4).) We note that the header on
defendant's Petition for Reconsideration does not include the attorney's name and state bar number. (Cal. Code Regs., tit. 8,
§§ 10205.12(a)(4), 10845(a).) Defendant's attorney is reminded that pleadings must comply with WCAB Rule 10845, and a
failure to do so could subject the petition to dismissal and the offending party to sanctions for failure to comply with WCAB
Rules. (Lab. Code, §5813; Cal. Code Regs., tit. 8, §10561.)

1 new finding that applicant's claim of internal injury was not resolved as part of the June 13, 2016
2 Compromise and Release.

3 Defendant contends that the parties intended to resolve all body parts, including applicant's claim
4 for internal injury, as part of the settlement agreement. Defendant further contends that the Opinion is not
5 supported by substantial evidence and that the applicant committed promissory fraud.

6 We received an answer from applicant.

7 We have considered the allegations of defendant's Petition for Reconsideration and applicant's
8 answer. Based on our review of the record, and for the reasons in our September 25, 2017 Opinion,
9 which we adopt and incorporate, and for the reasons discussed below, we will affirm our previous
10 Opinion.

11 **FACTUAL BACKGROUND**

12 The facts are set forth in the Opinion. In essence, applicant filed two claims against defendant.
13 The first was a claim for injury to the left thumb, knees, back, headaches, internal body system, psyche,
14 neck, and "multiples" on September 9, 2000 (ADJ2160716). The second claim was for injury to the
15 internal system, neck, back, knees, upper extremities, psyche, and urinary system through July 31, 2001
16 (ADJ634371).

17 On June 13, 2016, the parties entered into a compromise and release in the amount of
18 \$118,000.00. (Board Exhibit XX, Order Approving Compromise and Release and the Compromise and
19 Release Agreement, June 13, 2016 (C&R).) Both of applicant's claims were described in Paragraph One
20 (1), but the internal system was not listed as a body part, condition or system being settled in
21 ADJ634371. Below Paragraph Ten (10) of the C&R, the parties drew a star and handwrote, "[r]esolves
22 all liability/claims against American Home Assurance Company/AIG for Lifestyle Furnishings." (*Id.* at
23 p. 7.) Approximately 26 days later, applicant notified defendant that she did not believe that the
24 compromise and release resolved the claimed injury to her internal system. (Joint Exhibit A, Letter from
25 Applicant's Counsel to the Adelson Firm, July 12, 2016.)

26 On May 22, 2017, the matter proceeded to trial on the issue of whether the compromise and
27 release barred applicant's claim of injury to her internal system. (Minutes of Hearing and Summary of

1 Evidence, May 22, 2017, p. 2.) At trial, the defense attorney was asked why Paragraph One (1) of the
2 C&R did not include applicant's claimed injury to her internal system, and he responded, "he did not
3 have the complete file and needed to utilize his thumb drive to access additional information." (*Id.* at
4 p. 5.)

5 DISCUSSION

6 We begin by acknowledging that the Opinion incorrectly states that "there is no evidence that
7 applicant knew she had a claim for internal injury at the time the compromise and release was executed."
8 The evidence does show that applicant knew that she had a claim for internal injury at the time the parties
9 executed the compromise and release, and we apologize to the parties for that error. However, as
10 explained below, the outcome of our analysis is unchanged.

11 Contract principles are used to determine the meaning of a compromise and release. (*County of*
12 *San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th, 1180, 1184
13 [69 Cal.Comp.Cases 193].) A compromise and release must be interpreted to give effect to the mutual
14 intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and
15 lawful. (Civ. Code, § 1636.) However, as a compromise and release is a written contract, if it is possible
16 to do so, the parties' intention is ascertained from the writing alone, and if it is possible to do so, the clear
17 language of the contract governs its interpretation if an absurdity is not involved. (Civ. Code, §§ 1638,
18 1639.) Additionally, the whole of a contract is to be taken together so as to give effect to every part, if
19 reasonably practicable, with each clause helping to interpret the other. (Civ. Code, § 1641.)

20 Further, stipulations, such as those in a compromise and release are binding on the parties unless,
21 on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County*
22 *of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65
23 Cal.Comp.Cases 1].) "Good cause" to set aside stipulations depends upon the facts and circumstances of
24 each case and includes mutual mistake of fact, duress, fraud, undue influence, and procedural
25 irregularities. (*Johnson v. Workmen's Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases
26 362]; *Santa Maria Bonita School District v. Workers' Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases
27 848, 850 (writ den.); *City of Beverly Hills v. Worker's Comp. Appeals Bd. (Dowdle)* (1997) 62

1 Cal.Comp.Cases 1691, 1692 (writ den.); *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d
2 1160, 1170 [50 Cal.Comp.Cases 311].) However, when "there is no mistake but merely a lack of full
3 knowledge of the facts, which . . . is due to the failure of a party to exercise due diligence to ascertain
4 them, there is no proper ground for relief." (*Huston v. Workers' Comp. Appeals Bd.* (1979) 95
5 Cal.App.3d 856, 866 [44 Cal.Comp.Cases 798] quoting *Harris v. Spinali Auto Sales, Inc.* (1966) 240
6 Cal.App.2d 447.)

7 The parties must clearly identify each injury and list the corresponding body parts in Paragraph
8 One (1) because that section requires that the parties state "with *specificity* the date(s) of injury(ies) and
9 what part(s) of body, conditions or systems are being settled." (C&R, Paragraph One (1), p. 3, emphasis
10 added.) Further Paragraph One (1) also states that "[b]ody parts, conditions and systems may not be
11 incorporated by reference to medical reports." (*Id.* at pp. 3, 4, 5, emphasis in original.) Paragraph One (1)
12 allows the parties to clearly identify the settlement of multiple injuries with corresponding body parts by
13 requiring that the parties list the case number, the type of injury, the date of injury and the settled body
14 parts. (*Id.*) Therefore, if parties wish to settle multiple injuries to the same body part, the parties must list
15 that body part under the description of each injury, and the parties may not settle multiple injuries to one
16 body part by listing the body part under the description of one injury but not another. Thus, as explained
17 in the Opinion, the fact that the parties had notice of the alleged internal injury yet failed to include it in
18 the description of the cumulative trauma evidences an intent to exclude that body part from the
19 settlement.

20 As the parties did not settle the claimed internal injury in Paragraph One (1), we next examine
21 whether either the pre-printed general release in Paragraph Two (2) or the handwritten general release on
22 page seven of the compromise and release bars the claim. In *Jefferson v. Dept. of Youth Authority* (2002)
23 28 Cal.4th 299 [67 Cal.Comp.Cases 727], the Supreme Court held that a general release in a workers'
24 compensation case will bar other potential claims against the employer that exist at the time of execution
25 of the release unless the employee knows about the claim and expressly excepts it from the release. (*Id.*
26 at p. 310.) However, approximately six years after the Supreme Court decided that case, the compromise
27 and release form was revised to prevent overbroad releases and thus further the legislative intent of

1 protecting workers who might agree to unfortunate compromises because of economic pressure or lack of
2 competent advice. (See *Chavez v. Industrial Acc. Com.* (1958) 49 Cal.2d. 701, 702. [23 Cal.Comp.Cases
3 38].)

4 Here, the parties drafted the compromise and release on the November 2008 version of DWC-CA
5 Form 10214(c) as required by WCAB Rule 10874. (Cal. Code Regs., tit. 8, § 10874.) The release in
6 Paragraph Two (2) of that form states in relevant part,

7
8 Upon approval of this compromise agreement . . . and payment in
9 accordance with the provisions hereof, the employee releases and forever
10 discharges the above named employer(s) and insurance carrier(s) from all
11 claims and causes of action, whether now known or ascertained or which
12 may hereafter arise or develop as a *result of the above-referenced
13 injury(ies)*...

(C&R, Paragraph Two (2), p. 5, emphasis added.)

14 This release does not bar applicant's claimed internal injury because it is limited to the settlement
15 described in Paragraph One (1), and as discussed above, that paragraph did not settle the claimed internal
16 injury.

17 The handwritten statement that the parties' agreement, "[r]esolves all liability/claims against
18 American Home Assurance Company/AIG for Lifestyle furnishings," appears on page seven below
19 Paragraph Ten (10) of the compromise and release². (*Id.* at p. 7.) However, we must also consider the
20 limiting language in Paragraph Three (3) which states that:

21 This agreement is limited to the settlement of the body parts, conditions,
22 or systems and for the dates of injury set forth in Paragraph No. 1 and
23 further explained in Paragraph No. 9 *despite any language to the contrary
24 elsewhere in this document or any addendum.*

(*Id.* at Paragraph Three (3), p. 5, emphasis added.)

25 Thus, we must disregard the handwritten release as "language to the contrary elsewhere in the document"
26 because is not part of Paragraph One (1) or Paragraph Nine (9). However, even if the handwritten release
27 could be considered, it would not bar applicant's claimed internal injury. The parties may not supersede

² Two hand-drawn lines on page seven connect handwritten phrases to Paragraph Nine (9) but neither connects to the
handwritten release. Both lines insert the words "def asserts" before sentences written in Paragraph Nine (9).

1 the settlement described in Paragraph One (1) because Paragraph Three (3) only allows the handwritten
2 release to be treated as a further explanation of the settlement described in Paragraph One (1).
3 Accordingly, the handwritten release, like Paragraph Two (2), is a statement that applicant agrees to
4 resolve all liability/claims against defendants related to the injuries described in Paragraph One (1).

5 Further, a finding that the handwritten release resolved applicant's claim for internal injury would
6 not give effect to all parts of the compromise and release. The settlement form requires a detailed
7 explanation of the settlement by requiring that the parties "state with specificity" the date of injury and
8 the body parts being settled. The form further prohibits parties from incorporating body parts by
9 reference to medical reports. If the parties could state that all claims were resolved without further detail,
10 these requirements would be superfluous. Additionally, this would lead to absurd results because
11 defendants would be able to resolve all claims filed against them by an applicant with multiple known
12 injuries through a compromise and release that asserts that the applicant resolved all "liability/claims,"
13 even if the parties did not describe all of the cases on the settlement.

14 Although defendant may have intended to resolve the claimed injury to applicant's internal
15 system, there is insufficient evidence to support a finding that applicant fraudulently induced defendant
16 into entering into the compromise and release because the settlement was a "jointly drafted settlement
17 agreement." (Petition for Reconsideration, October 19, 2017, p. 12.) Defendant had both the obligation
18 and the opportunity to ensure that the written terms of the settlement accurately reflected its
19 understanding of the settlement agreement. Although a unilateral mistake may constitute grounds to
20 rescind a stipulation, it does not do so here because defendant could not explain why it did not describe
21 applicant's alleged internal system injury in Paragraph One (1) and "[f]ailure to make reasonable inquiry
22 to ascertain or effort to understand the meaning and content of the contract upon which one relies
23 constitutes neglect of a legal duty such as will preclude recovery for unilateral mistake of fact." (*Wal-*
24 *Noon Corporation v. Hill* (1975) 45 Cal.App.3d 605, 615.)

25 Our finding that the settlement did not resolve applicant's alleged internal system injury does not
26 address the merits of that claim.

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1 Thus, we affirm our September 25, 2017 Opinion and Order Granting Petition for
2 Reconsideration and Decision After Reconsideration.

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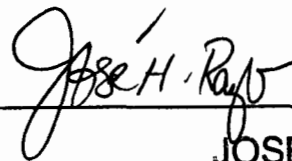
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1 For the foregoing reasons,


2 **IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals
3 Board that the Opinion and Order Granting Petition for Reconsideration and Decision After
4 Reconsideration issued by the Workers' Compensation Appeals Board on September 25, 2017 is
5 **AFFIRMED.**

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7 **WORKERS' COMPENSATION APPEALS BOARD**

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10 **JOSÉ H. RAZO**

11 **I CONCUR,**

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CHAIR

15 **KATHERINE ZALEWSKI**

16
17 

DEPUTY

18 **ANNE SCHMITZ**



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

20
21 **JAN 29 2019**

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

24 **ADELSON, TESTAN, BRUNDO, NOVELL & JIMENEZ**
25 **LAW OFFICES OF RONALD P. EHRMAN**
26 **MARIA MORALES**

27 **AH:ara**

MORALES, Maria