

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **EDWARD VACA,**

5 *Applicant,*

6 **vs.**

7 **VONS, permissibly self-insured,**

8 *Defendant.*

Case Nos.

ADJ9770846

ADJ9330589

ADJ9762823

(Los Angeles District Office)

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

9
10 Defendant seeks reconsideration, or alternatively removal, in response to the Joint Findings and
11 Order (F&O) issued on May 1, 2020, wherein the workers' compensation administrative law judge
12 (WCJ) found in pertinent part that applicant's Labor Code section 132a¹ petition filed in Case Nos.
13 ADJ9770846, ADJ9330589 and ADJ9762823 on March 18, 2015 has not been the subject of a valid
14 settlement agreement. The WCJ ordered that the issues raised by the parties' respective section 5813
15 petitions be deferred

16 Defendant contends that the WCJ erroneously failed to find that applicant's section 132a claim is
17 barred, estopped, precluded or otherwise invalid.

18 We received an Answer from applicant.

19 Defendant submitted additional papers labeled as supplemental pleadings on May 26, 2020. We
20 do not accept these papers because defendant did not seek leave to file them.²

21 The WCJ filed a Report and Recommendation on Reconsideration (Report) recommending that
22 the Petition be denied.

23
24 ¹ Unless otherwise stated, all further statutory references are to the Labor Code.

25 ² WCAB Rule 10964 provides in pertinent part: "When a petition for reconsideration, removal or disqualification has been
26 timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically
27 requested or approved by the Appeals Board . . . Supplemental petitions or pleadings or responses other than the answer shall
neither be accepted nor deemed filed for any purpose except as provided by this rule." (Cal. Code Regs., tit. 8, § 10848, now
§ 10964 (eff. Jan. 1, 2020).)

1 We have considered the allegations of the Petition, the Answer, and the contents of the Report.
2 Based on our review of the record, and for the reasons stated below, we will grant reconsideration and
3 affirm the F&O, except that we will amend to find that applicant's section 132a claim and accompanying
4 remedies are not barred, estopped, precluded or otherwise invalid as a matter of law.

5 **FACTUAL BACKGROUND**

6 On February 11, 2020, the matter proceeded to trial of the issue of whether "applicant's 132a
7 claim and accompanying remedies are barred, estopped or precluded or otherwise invalid as a matter of
8 law" in case numbers ADJ9770846, ADJ 9330845, and ADJ762823, and the WCJ deferred the parties'
9 section 5813 petitions pending in the same cases. (Minutes of Hearing and Order of Consolidation,
10 February 11, 2020, pp. 2:17-20, 3:3-5, 3:14-16.) The court ordered that the above-referenced cases be
11 consolidated, and that the evidence admitted in one case was admissible in the others. (*Id.*, p. 2:4-5.)

12 The WCJ admitted an exhibit entitled Confidential Settlement Agreement and General Release of
13 Claims by Edward Vaca (Release) dated September 26, 2016 into evidence. (Ex. AA, Confidential
14 Settlement, September 26, 2016.)

15 Paragraph 1 of the Release provides in pertinent part:

16 One check shall be made payable to Edward Vaca in the gross amount of fifty thousand
17 dollars (\$50,000), less applicable deductions and withholdings. This amount represents a
18 compromise of Plaintiff's claim for economic damages. . . . A second check shall be
19 made payable . . . in the gross amount of one hundred and fifty thousand dollars
20 (\$150,000.00). This amount is tendered as consideration for Plaintiff's claim for non-
21 economic compensatory damages, interest, punitive damages, a compromise of Plaintiff's
22 claim for attorney fees and costs incurred by Plaintiff and any other relief Plaintiff may
23 seek in connection with the Action. . . . Hereafter, the two checks shall be referred to as
24 the "Payment."
(Release, p. 1.)

25 Paragraph 5 provides in pertinent part:

26 Plaintiff shall withdraw any and all pending charges and complaints of discrimination
27 filed against any of the defendants in the Action with any governmental agency that are
open at the time of Plaintiff's execution of this Agreement.
(Release, p. 3.)

Paragraph 9 provides in pertinent part:

The Claims released herein include . . . any Claims in any way arising out of or based
upon Plaintiff's employment with Defendant, or the termination thereof, . . . Plaintiff will
not institute, . . . and/or continue any legal, administrative or grievance proceeding
against the Releasees . . .

1 (Release, pp. 3-4.)

2 Paragraph 13 provides in pertinent part:

3 It is expressly understood and agreed that Plaintiff is not eligible for reinstatement . . .
4 Plaintiff will neither seek nor accept any such employment . . .
(Release, p. 5.)

5 In the Opinion on Decision, the WCJ writes:

6 Defendants offer [the Release (Exhibit AA)] to prove that the 132a claim was previously
7 settled and released. In Paragraph A of Page 1, the 'Action' that is the subject of the
8 entire agreement is defined as Case BC589377. This civil case is not the same action as
ADJ9770846 et al. The actions may be based on overlapping facts and parties, but they
are different causes of action in different jurisdictions.

9 In the workers' compensation jurisdiction, a settlement must be approved by the WCJ,
10 and until that time, the causes of action of ADJ9770846, ADJ9330589, and ADJ9762823
are not 'barred, estopped, precluded or otherwise invalid'.
(Opinion on Decision, May 1, 2020, p. 3.)

11 In the Report, the WCJ writes:

12 Three Applications for Adjudication were filed on 12/18/14 alleging [that applicant] . . . ,
13 while employed as an Order Puller, at Santa Fe Springs, California, by [defendant],
14 sustained injuries arising out of and occurring in the course of employment which were
all the subject of Stipulated Awards on 9/17/19 as follows:

- 15 1. ADJ9770846 regarding injury to the left wrist on 5/9/13,
16 2. ADJ9330589 regarding injury to the neck and left shoulder on 10/24/13, and
17 3. ADJ9762823 regarding injury to the right wrist on 8/24/14.

18 . . .
19 A Petition for Benefits under Labor Code Section 132a was filed in each case, and was
20 the subject of a Finding and Award dated 11/12/15 and Findings of Fact dated 12/16/15
21 by WCJ John Hernandez, now retired, which stated that damages for the Section 132a
claim would be informally adjusted by the parties with jurisdiction reserved to the
WCAB, Exhibit JJ. A Finding of violation of Labor Code section 132a was affirmed by
Opinion on Decision After Reconsideration on May 17, 2019, Exhibit KK.

22 The Applicant entered into a document entitled Agreement and General Release on
23 9/26/16, Exhibit AA which does not mention the workers' compensation action, Exhibit
24 AA. No Compromise and Release or Third Party Compromise and Release has been
submitted for approval.
(Report, pp. 1-2.)

25 DISCUSSION

26 Section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals
27 Board acts on the petition within 60 days of filing. (§ 5909.) Section 5315 provides the Appeals Board

1 with 60 days within which to confirm, adopt, modify or set aside the findings, order, decision or award of
2 a workers' compensation administrative law judge. (§ 5315.)

3 On June 5, 2020, the State of California's Governor, Gavin Newsom, issued Executive Order N-
4 68-20, wherein he ordered that the deadlines in sections 5909 and 5315 shall be extended for a period of
5 60 days.³ Pursuant to Executive Order N-68-20, the time within which the Appeals Board must act was
6 extended by 60 days. Therefore, this decision is timely.

7 A petition for reconsideration is the mechanism by which a party may challenge a final order,
8 decision, or award. (§ 5900.) A "final" order has been defined as one that either "determines any
9 substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d
10 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528,
11 534-535 [45 Cal.Comp.Cases 410, 413]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.*
12 *(Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 66, 6651]) or determines a "threshold" issue
13 that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81
14 Cal.App.4th 1068, 1070, 1075, [65 Cal.Comp.Cases 650, 650-651, 655-656].) The Court of Appeal has
15 given examples of threshold issues to include "whether the injury arises out of and in the course of
16 employment, the territorial jurisdiction of the appeals board, the existence of an employment relationship
17 or statute of limitations issues." (*Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd.*
18 *(Gaona)* (2016) 5 Cal.App.5th 658, 662 (citations omitted.) "Such issues, if finally determined, may
19 avoid the necessity of further litigation." (*Id.* (internal quotation marks and citations omitted).)

20 By contrast, removal may be requested to challenge interim and non-final orders issued by a
21 WCJ. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71
22 Cal.Comp.Cases 155, 157, fn. 5]; *Kleeman v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 275,
23 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].

24 / / /

26 _____
27 ³ Governor Newsom's Executive Order N-68-20 may be accessed here: <https://www.gov.ca.gov/wp-content/uploads/2020/06/6.5.20-EO-N-68-20.pdf>. (See Evid. Code, § 452(c).)

1 Here, defendant filed the Petition seeking reconsideration or, alternatively, removal. However,
2 the F&O finds that applicant's March 18, 2015 section 132a petition filed in Case Nos. ADJ9770846,
3 ADJ9330589 and ADJ9762823 has not been the subject of a valid settlement agreement, thereby
4 disposing of defendant's defense that applicant released his section 132a claim. Thus, the F&O is a final
5 order for which defendant properly seeks reconsideration. Accordingly, we will treat the Petition as one
6 for reconsideration.

7 Turning to the merits of the Petition, we note that defendant contends that the WCJ erroneously
8 concluded that the WCAB must approve the terms of a release of a section 132a claim in order for the
9 release to have legal effect. Specifically, defendant argues that sections 5000 through 5006, set forth in
10 Division 4 of the Labor Code, require WCAB approval of releases of liability for compensation fixed by
11 sections 3200 through 6002, also set forth in Division 4, but not of releases of rights fixed by section
12 132a, which is set forth in Division 1.⁴

13 In *Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291, the court addressed the issue of whether
14 language in the parties' workers' compensation Compromise and Release (C&R) form releasing
15 defendant from "any other claims for reimbursement, benefits, damages, or relief of whatever nature"
16 encompassed a general release of civil claims and therefore justified summary judgement in favor of the
17 defendant. (*Camacho, supra*, at p. 300) The court held that because the C&R did not refer to claims
18 outside of workers' compensation, the language in the C&R did not release defendant from the worker's
19 civil claims, summarizing the law governing releases of workers' compensation claims as follows:

20 Given the more informal nature of workers' compensation proceedings, there are certain
21 safeguards in place to protect workers from unknowingly releasing their rights. For
example, "[t]o safeguard the injured worker from entering into unfortunate or

22 ⁴ We note that the Supreme Court has declined to use the Legislature's placement of workers' compensation statutes into
23 separate divisions of the Labor Code as a basis for interpreting workers' compensation statutes. (See *Webb v. Workers'*
24 *Comp. Appeals Bd.* (1980) 28 Cal.3d 621, 626-627 [45 Cal.Comp.Cases 1282], (stating that the "primary goal is to give effect
25 to the purpose of [the statute], seen in the context of the workers' compensation scheme as a whole. [Citations.] Moreover,
26 this court has repeatedly recognized that a rule of liberal construction applies to all aspects of workers' compensation law.
27 [Citations.] Though we have noted that section 3202, a statute requiring a rule of liberal construction for divisions 4 and 5 of
the Labor Code, is not applicable to section 139.5 because it appears in division 1 [Citation.], we reaffirmed in the same case
that "[the] underlying policy of [the workers' compensation statutes and their constitutional foundation in California
Constitution, article XX, section 21] as well as the recurrent theme of countless appellate decisions on the matter has been one
of a pervasive and abiding solicitude for the workman."')

1 improvident releases as a result of, for instance, economic pressure or bad advice, the
2 worker's knowledge of and intent to release particular benefits must be established
3 separately from the standard release language of the form. [Citation.]" (*Ibid.*) Further,
4 "[e]ven with respect to claims within the workers' compensation system, execution of the
5 form does not release certain claims unless specific findings are made. [Citations.]"
6 (*Ibid.*)

7 In addition, to safeguard injured workers from agreeing to unfair or unwise settlements,
8 Labor Code section 5001 provides that no settlement is valid unless the Workers'
9 Compensation Appeals Board or a workers' compensation referee approves the
10 settlement. (*Steller v. Sears, Roebuck & Co.* (2010) 189 Cal.App.4th 175, 180 [116 Cal.
11 Rptr. 3d 824].) The board or referee must inquire into the fairness and adequacy of a
12 settlement and may set the matter for hearing to take evidence when necessary to
13 determine whether to approve the settlement. (*Id.* at p. 181; Cal. Code Regs., tit. 8, §§
14 10870, 10882.) "These safeguards against improvident releases place a workmen's
15 compensation release upon a higher plane than a private contractual release; it is a
16 judgment, with 'the same force and effect as an award made after a full hearing.'
17 [Citation.]" (*Johnson v. Workmen's Comp. App. Bd.* (1970) 2 Cal.3d 964, 973 [88
18 Cal.Rptr. 202, 471 P.2d 1002]; see also *Steller*, at p. 181.)
19 (*Camacho, supra*, at pp. 301-302.)⁵

20 Notwithstanding that the Release in the record before us is analogous to that in *Camacho* in that it
21 pertains to a specific "Action" (defined as civil case number BC5893770) and does not mention
22 applicant's workers' compensation action, defendant argues that the Release nevertheless operates to
23 preclude liability arising from applicant's section 132a claim, obligates applicant to "withdraw" the
24 claim, and otherwise renders the claim invalid. (Opinion on Decision, p. 3.; Report, p. 2.; Petition, p.
25 13:18.) Defendant argues that select language in section 5000(a), providing that "nothing in this division
26 shall . . . impair the right of the parties' interest to compromise," supports its position. (Petition, p.
27 10:24-26.)

Here we observe that the full text of section 5000(a) provides that "[n]o contract, rule, or
regulation shall exempt the employer from liability for the compensation fixed by this division, but
nothing in this division shall . . . [i]mpair the right of the parties interested to compromise, *subject to the*
provisions herein contained, any liability which is claimed to exist under this division on account of
injury or death. (§ 5000(a) [Emphasis added.]) Thus, the statute plainly prohibits contracts such as
releases that purport to exempt employers from liability for workers' compensation benefits without

⁵ Effective January 1, 2020, WCAB Rules 10870 and 10882 are now WCAB Rule 10700.

1 limiting parties' legal ability to settle their disputes in the manner provided by Division 4. Notably, the
2 statute does not contain language exempting any claim from the Division 4 requirements that all releases
3 of liability be approved by the WCAB and all proposed settlement agreements must be submitted to the
4 WCAB for approval. (See §§ 5001, 5002.)⁶ We are therefore unable to discern statutory support for
5 defendant's position.

6 Further, we read *City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143 [63 Cal.Comp.Cases
7 944] (*Moorpark*) as case support for the proposition that section 132a claims are subject to the settlement
8 approval requirements set forth in Division 4. There, the Supreme Court opined that, although section
9 132a claims are not claims for workers' compensation benefits provided under Division 4, they
10 nevertheless concern rights incidental to such claims, and must therefore be adjudicated by the WCAB
11 and thus in the manner provided by Division 4. (See *Moorpark, supra*, at pp. 1155-1156 (finding that
12 section 5300 requires proceedings concerning rights incidental to recovery of workers' compensation
13 benefits to be instituted before the WCAB, that section 132a rights are incidental to the recovery of
14 workers' compensation benefits, and that the WCAB is the exclusive forum for pursuing section 132a
15 claims).)

16 Furthermore, in *Claxton v. Waters*, (2004) 34 Cal.4th 367, the Supreme Court clarified how
17 employer-employee parties to both civil and workers' compensation actions may demonstrate their intent to
18 settle all disputes existing between them without deviating from the process provided by Division 4. There
19 the Court held that an injured worker who executes a preprinted form used to settle workers'
20 compensation claims does not thereby release causes of action not within the scope of workers'
21 compensation law, including actions pending in civil courts. The Court explained that employer-
22 employee parties intending to settle all outstanding claims, both inside and outside the worker's
23 compensation system, need to make clear their intent to settle civil claims outside the workers'

24
25 ⁶ Section 5001 provides: "Compensation is the measure of the responsibility which the employer has assumed for injuries or
26 deaths which occur to employees in his employment when subject to this division. No release of liability or compromise
27 agreement is valid unless it is approved by the appeals board or referee." (§ 5001.) Section 5002 provides: "A copy of the
release or compromise agreement signed by both parties shall forthwith be filed with the appeals board. Upon filing with and
approval by the appeals board, it may, without notice, of its own motion or on the application of either party, enter its award
based upon the release or compromise agreement." (§ 5002.)

1 compensation system by executing a separate document expressing that intent:

2 To hold that the standard language of the release would also apply to the injured worker's
3 civil claims outside of the workers' compensation scheme, regardless of whether a civil
4 action has been filed at the time of the execution of the workers' compensation release,
would run counter to the public policy of protecting the injured worker against the
unintentional loss of workers' rights. [Citations.]

5 Thus, execution of the mandatory standard preprinted compromise and release form
6 would only establish settlement of the workers' compensation claims; the intended
7 settlement of claims outside the workers' compensation system would have to be
8 reflected in a separate document. [Citations.] As is true with settlements in civil actions
generally, the separate document need not identify precise claims; it would be sufficient
9 to refer generally to causes of action outside the workers' compensation law `in clear and
non-technical language.' [Citation.]
(*Claxton, supra*, 34 Cal.4th at p. 378.)

10 It logically follows that, if an applicant in a workers' compensation action executes a release in
11 favor of the employer in a civil action but not a separate release pertaining to the workers' compensation
12 action, then the applicant has not released the employer from the workers' compensation action. Thus,
13 we are unable to discern legal support for defendant's contention that the WCJ erroneously determined
14 that applicant's section 132a claim is not barred, estopped, precluded or otherwise invalid.

15 However, although the parties framed the issue for trial as whether "applicant's 132a claim and
16 accompanying remedies are barred, estopped or precluded or otherwise invalid as a matter of law" and
17 the WCJ explicitly determined that issue in the negative, we note that the F&O does not explicitly set
18 forth that determination. (Minutes of Hearing and Order of Consolidation, February 11, 2020, pp. 2:17-
19 20, 3:3-5, 3:14-16; Opinion on Decision, p. 3.) Rather, the F&O states that the petition filed March 18,
20 2015 has not been the subject of a valid settlement agreement. Accordingly, we will amend the F&O so
21 that it finds that applicant's section 132a claim and accompanying remedies are not barred, estopped,
22 precluded or otherwise invalid as a matter of law.⁷

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25 ⁷ We note that the Petition raises issues concerning remedies not raised or addressed in the record before us; namely, that the
26 remedies applicant seeks constitute a double recovery in that applicant has allegedly been paid for loss of compensation he
27 seeks by way of his section 132a claim; that applicant may seek interest for which he has already been paid; that applicant
may seek reinstatement; and that in 2019 defendant allegedly paid applicant an amount in excess of any potential section 132a
penalty. (Petition, pp. 17:20-20:2.) Because these issues have not been raised and addressed in the record before us, we do
not consider them here.

1 Accordingly, we will grant reconsideration and affirm the F&O, except that we will amend to find
2 that applicant's section 132a claim and accompanying remedies are not barred, estopped, precluded or
3 otherwise invalid as a matter of law.

4 For the foregoing reasons,

5 **IT IS ORDERED** that the Petition for Reconsideration of Joint Findings and Order issued on
6 May 1, 2020, is **GRANTED**.

7 **IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers'
8 Compensation Appeals Board, that the Joint Findings and Order issued on May 1, 2020, is **AFFIRMED**,
9 **EXCEPT** that it is **AMENDED** as follows:

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11 **ADJ9770846 FINDINGS OF FACT**

12 2. Applicant's section 132a petition filed on March 18, 2015 and accompanying
13 remedies are not barred, estopped, precluded or otherwise invalid as a matter of law.

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15 **ADJ9330589 FINDINGS OF FACT**

16 2. Applicant's section 132a petition filed on March 18, 2015 and accompanying
17 remedies are not barred, estopped, precluded or otherwise invalid as a matter of law.

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1 **ADJ9762823 FINDINGS OF FACT**

2 2. Applicant's section 132a petition filed on March 18, 2015 and accompanying
3 remedies are not barred, estopped, precluded or otherwise invalid as a matter of law.
4

5 **WORKERS' COMPENSATION APPEALS BOARD**

6
7 **/s/ KATHERINE A. ZALEWSKI, CHAIR**
8

9 **I CONCUR,**

10
11 **/s/ DEIDRA E. LOWE, COMMISSIONER**
12

13 **/s/ MARGUERITE SWEENEY, COMMISSIONER**
14



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

16 **AUGUST 5, 2020**

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

19 **EDWARD VACA**
20 **FENSTEN AND GELBER**
21 **PRINDLE GOETS BARNES & REINHOLTZ**
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24

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

VACA, Edward