

1 We construe applicant's August 23, 2013 letter to the WCJ as a timely petition for
2 reconsideration of the WCJ's August 8, 2013 OACR.

3 Labor Code section 5903 provides that any person aggrieved by a WCJ's final decision may
4 petition for reconsideration "within 20 days after the service" of the decision, with the time period
5 extended five days pursuant to Labor Code section 5316 and Code of Civil Procedure section 1013 when
6 service is by mail, as in this case.¹ Thus, applicant's August 23, 2013 letter was timely presented within
7 the period allowed by section 5903 to seek reconsideration. Moreover, the Appeals Board first learned of
8 applicant's letter more than 60 days after it was sent to the WCJ. Ordinarily, the passage of 60 days
9 without action by the Appeals Board is considered to be a denial of a petition for reconsideration by
10 operation of law. (Lab. Code, § 5909.) However, the fact that the letter was not initially identified as a
11 petition for reconsideration is not the fault of applicant, and the delay in the Appeals Board's receipt of
12 the petition should not affect her statutory and due process right to have the petition for reconsideration
13 considered on the merits.² (*Shipley v Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104 [57
14 Cal.Comp.Cases 493].)

15 Reconsideration is granted pursuant to applicant's August 23, 2013 letter petition. The August 8,
16 2013 OACR was a final order that the WCJ was authorized to address pursuant to Appeals Board Rule of

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¹ Further statutory references are to the Labor Code.

23 ² Applicant's August 23, 2013 letter petition is unverified, contrary to section 5902, which provides, inter alia, that a petition
24 for reconsideration "shall be verified upon oath in the manner required for verified pleadings in courts of record." However,
25 lack of verification is not a jurisdictional requirement, which requires dismissal of the petition, particularly when the petitioner
26 has not received notice of the defect as in this case. (*Wings West Airlines v. Workers' Comp. Appeals Bd. (Nebelon)* (1986)
27 187 Cal.App.3d 1047 [51 Cal.Comp.Cases 609]; *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425.) Here,
applicant is representing herself and she acted in good faith to timely raise her concern about the OACR by sending the
August 23, 2013 letter to the WCJ. Moreover, applicant verified the statements in her letter under penalty of perjury in the
course of her telephone testimony during the hearing on February 24, 2005, as shown by the Minutes of Hearing from that
date.

1 Practice and Procedure 10859 following the filing of applicant's petition for reconsideration.³ The WCJ
2 correctly decided in her February 25 2014 F&O that the OACR should be rescinded, but she did not act
3 within the 15 day time period allowed by Rule 10859. Accordingly, as our Decision After
4 Reconsideration, we rescind the WCJ's February 25, 2014 F&O, but essentially reiterate the WCJ's
5 findings as the basis for entering a new final order rescinding the August 8, 2013 OACR.⁴

6 In that defendant seeks reconsideration of the February 25, 2014 F&O that is rescinded as part of
7 our Decision After Reconsideration herein, its petition is moot and is dismissed for that reason.⁵

8 DISCUSSION

9 When an order approving compromise and release has become final, it generally may be
10 rescinded only upon the filing of a petition to reopen and a showing of "good cause," including fraud,
11 duress, undue influence, or mutual mistake of fact. (Lab. Code, §§5803, 5804; see generally, *Johnson v.*
12 *Workmen's Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362, 369]; *Brunski v.*
13 *Industrial Acc. Com.* (1928) 203 Cal 761, 764 [15 I.A.C. 128, 130]; *Carmichael v. Industrial Acc. Com.*
14 (1965) 234 Cal.App.2d 311, 314 [30 Cal.Comp.Cases 169, 171]; *Silva v. Industrial Acc. Com.* (1924) 68
15 Cal.App.3d 510, 515 [11 I.A.C. 266, 267].)

16 However, when an order approving compromise and release comes before the Appeals Board on
17 a petition for reconsideration, the Appeals Board's powers are much more extensive. As with any order
18 on reconsideration, the Appeals Board may affirm, amend, or rescind the order based on the existing
19 record and/or on new evidence (Lab. Code, §§ 5906, 5907, 5908(a)) and, in so doing, the Appeals Board
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22 ³ Rule 10859 provides in full as follows: "After a petition for reconsideration has been timely filed, a workers' compensation
23 judge may, within the period of fifteen (15) days following the date of filing of that petition for reconsideration, amend or
24 modify the order, decision or award or rescind the order, decision or award and conduct further proceedings. Further
25 proceedings shall be initiated within 30 days from the order of recession. The time for filing a petition for reconsideration
pursuant to Labor Code section 5903 will run from the filing date of the new, amended or modified decision. After this period
of fifteen (15) days has elapsed, a workers' compensation judge shall not make any order in the case nor correct any error until
the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration." (Cal.
Code Regs., tit. 8, § 10859.)

26 ⁴ We do not agree with the implication in the WCJ's decision and Report that the erroneous date of birth in the C&R
constitutes a mutual mistake of fact that provides good cause for rescission of the OACR. For that reason, the WCJ's
February 25, 2014 Finding of Fact number 7 is not carried forward as part of our Decision After Reconsideration.

27 ⁵ If defendant claims to be aggrieved by the new final decision herein, it may timely seek reconsideration.

1 may determine that the evidence does not “justify” the WCJ’s decision. (Lab. Code, § 5903(c).) The
2 Appeals Board has “considerable discretion” and “enjoys broad authority to correct injustices” upon
3 reconsideration. (*Redner v. Workmen’s Comp. Appeals Bd.* (1971) 5 Cal.3d 83, 92 [36 Cal.Comp.Cases
4 371, 377]).

5 Thus, the Appeals Board can upon reconsideration set aside an order approving compromise and
6 release for other than the “good cause” grounds needed to support a petition to reopen as described
7 above. In sum, the Appeals Board is not limited to acting on the grounds of fraud, duress, undue
8 influence, or mutual mistake of fact in reconsidering a compromise and release, and an order approving a
9 compromise and release can be set aside for other reasons following reconsideration. (*Argonaut Ins.*
10 *Exchange v. Industrial Acc. Com. (Bellinger)* (1958) 49 Cal.2d 706, 709-712 [23 Cal.Comp.Cases 34,
11 35-37].)⁶

12 In this case, defendant does not contest applicant’s statement in her August 23, 2013 letter that
13 she retracted what she considered to be an “offer” of settlement before the offer was accepted by
14 defendant’s agent. The un rebutted information provided by applicant in her letter and subsequent
15 testimony on February 24, 2014, would have supported a timely rescission of the OACR by the WCJ
16 pursuant to Rule 10859. This is expressed by the WCJ in her Report, which quotes from the Opinion on
17 Decision and provides the reasons the WCJ reached her decision to rescind the OACR, in pertinent part
18 as follows:

19 “The sole issue in this case is whether or not the C&R, which was
20 approved by the undersigned on August 8th, 2013, should be set aside.
The injured worker states the chronology as follows:

21 08/16/2012: The last time the injured worker had a conversation with
22 [defendant’s adjusters] Ms. Gomez, Corvel or Sedgwick.

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24 ⁶ In *Bellinger*, the WCJ had issued an order approving compromise and release after finding that the executed compromise
25 and release was “outstandingly fair to all concerned,” and there was no allegation of fraud, duress or undue influence. On
26 reconsideration, however, the Board set aside the order approving compromise and release and substituted its own Findings
27 and Award. In the proceedings before the Supreme Court the defendant contended that “once the [WCJ] has determined that
the [compromise and release] should be approved, the [Appeals Board] cannot substitute its contrary determination for that of
the [WCJ].” The Supreme Court held, however, that the Board did have the power to reconsider the order approving
compromise and release and that, on reconsideration, it could “redetermine the case upon the existing record” and it could take
a “different view of the same evidence.” (*Bellinger, supra*, 49 Cal.2d at pp. 709-712 [23 Cal.Comp.Cases at pp. 35-37].)

1 03/27/2013: The injured worker signed and mailed the Compromise and
2 Release (C&R) to the claims adjustor.

3 03/28/2013: The injured worker called Ms. Gomez, left a message and
4 asked her to call to discuss the settlement agreement. During April 2013,
5 the injured worker left many phone messages indicating that she wanted to
6 back out of the settlement.

7 08/08/2013: EAMS indicated that the C&R was entered into the system
8 and ready for review.

9 08/08/2013: The undersigned approved the C&R.

10 08/08/2013: "On August 23rd, 2013, the injured worker sent a letter to Judge Duncan
11 stating that she wished to set aside the 'Offer of Compromise and Release'
12 (see Exhibit 1). She has since had some medical issues and has moved to
13 Sedona, Arizona...

14 08/08/2013: "A hearing was held...[on February 24, 2005] to allow the parties to
15 present evidence in this case. The evidence presented was the letter from
16 Ms. Chott dated August 23rd, 2013, stating her continual attempts to
17 contact the adjustor to discuss the C&R, and her credible statement that she
18 has not been able to discuss the settlement offer since October 16th, 2012.
19 She also testified remotely via telephone as to the contents of that letter.

20 08/08/2013: "It appears from both the letter of August 23rd, 2013 and her testimony
21 that Ms. Chott believes the document she signed was an offer and a
22 settlement attempt rather than a final settlement document. She had hoped
23 to be able to discuss the contents of this document with the claims
24 specialist to have a better understanding of this process, however, this was
25 denied her. In fact, it is not clear why the claims specialist failed to contact
26 Ms. Chott to discuss this process at any time over the four month period
27 which spanned from between 03/27/2013 when the injured worker signed
the letter, to August of 2013 when the C&R was sent to the court for
approval.

"Labor Code Section 5002 states that a copy of the release or compromise
agreement **signed by both parties** shall forthwith be filed with the Appeals
Board. Generally, Compromise and Release documents, once signed by
both parties, are not able to be unilaterally rescinded. Instead, the C&R is
to be presented to the Judge. The Judge must hold a hearing on the issue of
whether the C&R should be set aside on the basis fraud, mutual mistake of
fact or duress.

"However, in the instant case, the C&R was only signed by one of the
parties, Ms. Chott, when Ms. Chott tried to unilaterally rescind her
agreement to settle her case by way of the C&R. And it appears clear that
she did not want it finalized until she had at least talked to the claims
specialist about the C&R. An opportunity the claims specialist never
granted her.

1 "Instead, the Ms. Gomez ignored attempts by Ms. Chott to discuss the
2 C&R with her. In addition, Ms. Gomez ignored attempts by Ms. Chott to
3 rescind the C&R. Instead she signed the document and then four months
4 later, in August of 2013, she forwarded the C&R to the court for review,
5 without putting the court on notice of the fact that the injured worker had
6 tried to back out of the agreement BEFORE it had been signed by the
7 claims specialist. Had the undersigned know this important piece of
8 information, I would NOT have approved the C&R.

9 "The injured worker credibly testified that she did attempt many times to
10 call the claims specialist and state that she wanted to rescind the document
11 prior to the claims specialist signing it in August of 2013. Once Ms.
12 Gomez had received word of this intention by the injured worker to rescind
13 the document, she should have contacted the injured worker to discuss the
14 matter further. Instead, she simply ignored the injured worker's requests
15 and signed the document and then four months later, she forwarded it to the
16 court." (Emphasis in original.)

17 We agree with and adopt the WCJ's view of the facts as expressed in the above-quoted portion of
18 her Report with regard to applicant's intention to make a settlement offer when she signed the
19 compromise and release form and sent it to defendant's agent Ms. Gomez. We also agree with and adopt
20 the WCJ's view as expressed in the above-quoted portion of her Report that applicant revoked her offer
21 to settle before its acceptance by communicating the revocation in a message to Ms. Gomez and by
22 making multiple attempts to speak directly with her about the proposed settlement before it was
23 presented to the WCJ.

24 Defendant's failure to respond to any of applicant's messages for several months along with the
25 failure to inform the WCJ that applicant had revoked her offer to settle at the time the C&R was
26 presented for approval supports the conclusions that the C&R was not "duly executed" in accordance
27 with section 5003 ("Every release or compromise agreement shall be in writing and duly executed..."),
that there is good cause to set aside the C&R, and that rescission of the OACR is in the interest of
substantial justice in this case.

For the foregoing reasons,

IT IS ORDERED that applicant's August 23, 2013 letter petition for reconsideration of the
August 8, 2013 Order Approving Compromise And Release of the workers' compensation administrative
law judge is **GRANTED**.

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CHOTT, Danielle

1 IT IS FURTHER ORDERED that defendant's petition for reconsideration of the February 25,
2 2014 Findings & Order of the workers' compensation administrative law judge is **DISMISSED** as moot.

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4 **WORKERS' COMPENSATION APPEALS BOARD**

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7 **MARGUERITE SWEENEY**

8 I CONCUR,

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12 **FRANK M. BRASS**

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14 **DEIDRA E. LOWE**



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

18 **MAY 23 2014**

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

22 **DANIELLE CHOTT**
23 **HOMAN & STONE**
24 **EMPLOYMENT DEVELOPMENT DEPARTMENT**

25 **JFS/abs**

26
27 **CHOTT, Danielle**