WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARACHELLE JACKSON, *Applicant*

vs.

DOOR TO HOPE; NEW YORK MARINE AND GENERAL INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ11061012
Salinas District Office

OPINION AND DECISION AFTER RECONSIDERATION

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

Defendant, Door to Hope, seeks reconsideration or, in the alternative, removal of an Order Setting Aside Compromise & Release Agreement (Order) issued by a workers' compensation administrative law judge (WCJ) on July 23, 2020. In the Order, the WCJ set aside an Order Approving Compromise & Release (OACR) issued on June 26, 2019, whereby the parties agreed to settle applicant's workers' compensation claim for $95,000. In its petition for reconsideration/removal, defendant argues that the WCJ erred in setting aside the OACR on the grounds that applicant failed to establish good cause to be relieved from the settlement.

We have considered defendant's petition and we have thoroughly reviewed the record in this matter. We have not received an answer from applicant, Marachelle Jackson. We have received a Report on Petition for Reconsideration/Removal (Report) from the WCJ, recommending that we dismiss defendant's petition for reconsideration and deny its petition for removal. For the reasons discussed below, as our decision after reconsideration, we affirm the Order of July 23, 2020 by the WCJ.

FACTS

Applicant, Marachelle Jackson, while employed on April 21, 2017 as a Counselor at Salinas, California, by defendant sustained an admitted injury AOE/COE to her wrist and neck

and claims to have sustained injury AOE/COE to her nervous system, hands, head, arms, and psyche. (Minutes of Hearing & Summary of Evidence (SOE), 6/29/2020, p. 2.)

On July 19, 2018, the parties submitted a Compromise & Release (C&R), agreeing to settle applicant's workers' compensation claim for $70,000. The same day, the WCJ issued an Order Suspending the C&R, stating:

> IT APPEARING THAT the parties have filed a Compromise and Release for $70,000, however, applicant had cervical spine surgery in November 2017 and her condition has not yet been declared to be permanent and stationary. In fact Dr. Li has submitted a medical report dated 4/18/18 which indicates that additional procedures for facet neurotomies are being considered. Applicant has had 14 pins inserted in her wrist which is also still under active medical treatment. It appears that Dr. Carver has retired and his last report was dated January 2018. Dr. James Lin is treating the wrist injury and he is recommending surgery on the right wrist (possibly a compensable consequential injury for which defendant has denied liability). Further complicating matters is that a recommendation has been made to remove the pins from the left wrist and it is unclear if this surgery has occurred. The WCJ has requested that more recent medical reports be obtained by the parties to clarify applicant's current status. In view of the uncertain medical status the WCJ has elected to suspend the settlement and to set the matter for a status conference. It is anticipated that defendant will continue paying temporary disability and authorizing medical treatment pending completion of the status conference.

(Order Suspending Compromise and Release and Notice of Status Conference, 7/19/2018, p. 1.)

On May 21, 2019, counsel for applicant and defendant appeared at a hearing before the WCJ. During the hearing, the WCJ ordered the Medical Director of the Division of Workers' Compensation (DWC) to issue a qualified medical evaluator (QME) panel in the specialty of psychology within 30 days. However, after the hearing, and without seeking the psychology QME panel, the parties negotiated a new C&R, which was submitted to the WCJ on June 26, 2019. Pursuant to the new C&R, the parties agreed to settle applicant's claim for $95,000. The settlement was subsequently reviewed by the WCJ and determined to be adequate. Consequently, on June 26, 2019, the WCJ issued an Order Approving Compromise & Release (OACR).

After the settlement proceeds were paid, applicant dismissed her attorney and filed a petition for reconsideration of the OACR on August 28, 2019. In her petition, applicant requested that the Appeals Board set aside the OACR because, on the date that she signed the C&R, she was undergoing a mental health crisis, did not understand the terms of the settlement agreement, and did not receive the mental health evaluation ordered by the WCJ. Applicant also claimed that her

attorney pressured her into signing the C&R and that she was falsely informed that the settlement was her only option.

On October 28, 2019, for service-related reasons, the Appeals Board issued an Order Dismissing Applicant's Petition for Reconsideration and returned the matter to the WCJ to determine whether "good cause" existed to set aside the OACR pursuant to Labor Code section 5803.[1]

On January 7, 2020, the parties filed a pretrial conference statement (PTCS) with the WCJ. According to the PTCS, applicant stated that:

> I was led to believe the defense, my attorney on file [Dirk] and the judge had come together with my comp & release only to find out my attorney did not do what I had instructed and did not include me or the judge with what he and defense had agreed my claim should pay out but very clearly not in my best interest and never explained the amount agreed on or what my legal intitlement [sic] should be vs what was given and I was told no medical was available to furnish my care. at time of signing fraudulent by Dirk to not have any witness in the room with us but signed off on the paperwork as if a witness was present.
>
> I want the courts to know the court ordered med eval to see a mental health dr. to treat my very serious suicidal ideation was not important to Mrs. Roberts or Dirk and I was told the court order would "go away" in the process of comp & release instead of being top priority to have done for his clients best medical care right. If the court would go thru the countless denials re any and all mental health needs for no reason – what only caused me undo [sic] distress and could have led to me taking my own life in my opinion its [sic] clear neither wanted anyone else "myself" or highest authority the judge to be part of any fair settlement in order for them to agree and Dirk drew up agreement and yes pressured to sign with no time to think.

(PTCS, 1/7/2020, p. 7, original underscoring.)

The matter came on for trial on June 29, 2020. At trial, applicant testified in pro per that:

> She does recall the settlement offer made to her by her attorney, Mr. [Dirk] Stemerman. The court had previously advised her that she needed a mental health evaluation. What happened next is that she saw her attorney two weeks later. He did not send her a letter regarding her options. He did not give her any options. He told her that the settlement was the best that he could get for her; that if she did not sign the agreement, she would get a lesser amount of money. She asked him about mental health benefits. He told her that she would have to obtain these through private insurance. She told him that she was not mentally well and needed mental health treatment. He was not interested in a mental health evaluation. He told her to sign the agreement because it was the best offer he could get. There was no additional discussion.

[1] All further statutory references are to the Labor Code unless otherwise stated.

> When he told her about the settlement proposal, she just cried. She could not believe after all the things that had happened that this was her best alternative. She had never been this ill before in her life.
>
> She agreed to sign the settlement agreement because she had no other options. After the settlement, she and her daughter tried to find a doctor. Her condition continued to get worse. She called her attorney to ask for help. He told her that she must use private insurance. (SOE, pp. 5-6.)

During trial, applicant also described her interactions with several psychiatrists who treated her after her injury. First, applicant testified that Dr. Ronald Diebel, a psychiatrist who evaluated applicant's mental status in 2018, declined applicant's request to change her medication from Paxil to Zoloft, despite telling Dr. Diebel that she wanted to kill herself. (SOE, p. 5.) Applicant also testified that she had informed a different psychiatrist, Dr. Rosina Linz, "everything about her case and about wanting new prescriptions," and that Dr. Linz's "only response was, 'I do not know what to say.' Dr. Linz wanted to see her in two weeks." (SOE, p. 5.) Applicant testified that she was "very surprised [and] was crying more" in response to Dr. Linz's statements. (SOE, p. 5.) During trial, the WCJ admitted as evidence Doctors Diebel's and Linz's reports, as well as various reports of other doctors issued between 2017 and 2018 and an orthopedic QME report. The WCJ also received in evidence a deposition taken of applicant on December 3, 2018. (Deft's Exhs. D-1-D-28.)

After trial, the WCJ issued an F&O setting aside the OACR. In the F&O, the WCJ found that applicant, through her uncontradicted testimony, established "good cause" to set aside the OACR on the grounds that the settlement was secured by duress or undue influence. (F&O, p. 3.) In the F&O, the WCJ also found that "[a]pplicant has alleged a psychiatric injury and this injury has not been addressed. The WCJ has elected to set aside the [OACR] and to order that the Medical Unit issue a QME panel in the specialty of psychiatry….and proceed with a psychiatric evaluation." (F&O, p. 3.) The WCJ deferred all other issues and reserved jurisdiction over the matter. (F&O, p. 1, Finding of Fact No. 6.)

Defendant now petitions for reconsideration and, alternatively, removal, arguing that: (1) applicant's agreement to sign the C&R was not secured by duress or undue influence; (2) the WCJ did not have good cause to set aside the OACR; and (3) it is inequitable to set aside the OACR

without requiring applicant (and her former attorney) to repay the $95,000 in settlement proceeds already distributed pursuant to the C&R. For the reasons that follow, we will affirm the Order.

DISCUSSION

I. Reconsideration versus removal

It is well settled that reconsideration may be had only of a final order, decision or award. (Lab. Code, § 5900.) A "final order" for purposes of section 5900 includes any order that settles, for purposes of the compensation proceeding, an issue critical to the claim for benefits, whether or not it resolves all the issues in the proceeding or represents a decision on the right to benefits. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661].) We have previously held that a WCJ's order setting aside an OACR and setting the matter for further proceedings is not a final order and is not one subject to reconsideration. (*The Hartford Insurance Company/The Hartford Casualty Insurance. Co. v. Workers' Comp. Appeals Bd*. (2002) 68 Cal.Comp.Cases 79, 81 (writ denied).) We will therefore dismiss defendant's petition for reconsideration.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155] (*Cortez*); *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133] (*Kleemann*).) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955; see also *Cortez*, *supra; Kleemann*, *supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955.) As discussed below, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to defendant.

II. "Good cause" to set aside the OACR under section 5803

We now turn to whether the WCJ properly determined that "good cause" existed to set aside the OACR and to reopen applicant's case pursuant section 5803.

The Appeals Board has continuing jurisdiction to "rescind, alter, or amend any order, decision, or award," if a petition is filed within five years of the date of injury and "good cause"

to reopen is alleged and shown. (Lab. Code, § 5803.) An order approving a C&R is an "order, decision, or award" that may be reopened for "good cause" under section 5803. "Good cause" includes mutual mistake of fact, duress, fraud, undue influence, procedural irregularities, incompetency, or minority at the time of execution of the agreement, and depends largely upon the circumstances of each case. (*Johnson v. Workmen's Comp. Appeals Bd*. (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362].) "To reopen for 'good cause' there must exist some ground, not within the knowledge of the [WCJ] at the time of making the former award or orders which render said original award or orders inequitable; this cannot be premised upon a mere change of opinion by the [WCJ]." (*Nicky Blair's Restaurant v. Workers' Comp. Appeals Bd*. (1980) 109 Cal.App.3d 941, 955 [45 Cal.Comp.Cases 876].) Absent a showing of good cause, the Board is powerless to set aside the order. (*Fidelity & Casualty Co. v. Workers' Comp. Appeals Bd*. (1980) 103 Cal.App.3d 1001, 1012 [45 Cal.Comp.Cases 381].)

The party seeking to set aside an OACR after it has become final bears the burden of showing good cause. (Lab. Code, § 5705 [the burden of proof rests upon the party with the affirmative of the issue]; see also Lab. Code, § 3202.5.) However, the established legislative policy is that the Workers' Compensation Act must be construed liberally in favor of extending disability benefits (Lab. Code, § 3202), and any reasonable doubt whether an injury is compensable will be resolved in favor of the employee. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317-319 [35 Cal.Comp.Cases 500] (*Garza*).) This rule is binding upon the Board. (*Id*. at p. 317.)

A decision by the WCJ that is based on factual findings that are supported by substantial evidence is generally affirmed by the Board. (Lab. Code, §§ 5903, 5952; *Garza, supra*, 3 Cal.3d at pp. 317-319; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 639 [35 Cal.Comp.Cases 16] (*LeVesque*).) Where the WCJ's findings are supported by solid, credible evidence, the Board must accord them great weight and can reject them only on the basis of contrary evidence of considerable substantiality. (*Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246, 256 [54 Cal.Comp.Cases 349].) The Board may not reject evidence that is uncontradicted and unimpeached and must accept as true the intended meaning of such evidence. (*Garza*, at pp. 317-318; *LeVesque*, at p. 639.)

For the reasons discussed below, we conclude that the WCJ's finding of "good cause" to set aside the OACR is supported by the evidence and a determination of applicant's credibility, which will be affirmed.

a. The evidence supports the WCJ's finding of "good cause" to set aside the OACR.

As explained above, the WCJ determined that there was "good cause" to set aside the OACR under section 5803, where applicant established that the agreement was secured by duress or undue influence. In so finding, the WCJ relied upon applicant's uncontradicted testimony that: (1) her attorney did not send her a letter advising her of her options; (2) he did not give her any option other than a settlement; (3) he told her that if she did not sign the agreement she would be given a lesser amount of money; (4) when applicant told her attorney that she needed mental health treatment, her attorney was "not interested" in a mental health evaluation; (5) when her attorney told her about the settlement proposal, she just cried; and (6) she could not believe that with all the things that have happened to her that this was her best alternative. (F&O, p. 3.)

In his Report recommending that we deny defendant's petition for reconsideration/removal, the WCJ explained:

> The WCJ had the opportunity to determine the applicant's credibility while listening to her testimony. She did not hesitate while answering questions and her testimony was consistent throughout the trial. After weighing applicant's testimony in connection with her demeanor on the witness stand, the WCJ has determined that applicant was a credible witness.

(Report, 8/24/2020, p. 4.)

The WCJ's findings are entitled to great weight because they are based on applicant's uncontradicted and unimpeached testimony regarding her suicidal, depressed, and anxious mental state at the time of signing the C&R, as well as her confusion stemming from her communications with her attorney during the settlement process. Even when cross-examined about a statement in Dr. Linz's report that applicant's "mental health condition was within normal limits," applicant explained that she did "not recall this statement. She was in a crisis mode…holding on, 'white-knuckling it'…[s]he felt suicidal at that time." (SOE, p. 8.) Additionally, we do not discern any evidence of considerable substantiality contrary to the WCJ's findings that would allow us to reject them. Instead, a great deal of evidence in the record, including applicant's statements provided in the January 7, 2020 PTCS and her psychiatrists' reports containing their clear concerns for

applicant's mental health, corroborate applicant's testimony and provide further support for the WCJ's credibility determination.

Defendant argues, however, that, absent a medical determination that applicant was unfit to make sound decisions due to psychiatric issues at the time of the settlement, the evidence in the record does not meet the threshold of "good cause." (Petition, p. 7.) Defendant states, "there is no medical reporting indicating Applicant's inability to take care of herself or her property. On the contrary, the most recent psychiatric evidence, from ten months before, indicates Applicant was stable on medications which she herself admits were helping her." (Petition, p. 8.) We reject defendant's argument.

Although defendant is correct that the psychiatric evidence in the record predates the June 2019 settlement by several months, defendant ignores the substantial amount of evidence of applicant's serious, ongoing distress contained in these reports. For instance, in the reports issued by Doctors Linz and Diebel in July and August 2018, the psychiatrists documented applicant's severe psychiatric distress, noting, among other things, that applicant reported "suicidal ideations," that she had "[p]ain disorder with related psychological factors, major depression associated with work related injury, and polysubstance dependence," and that she required ongoing Cognitive Behavioral Therapy (CBT) with Dr. Linz. (Deft's Exhs. D-17 & D-28.) In another psychiatric report issued on December 6, 2018 by Dr. Sarah DeLand, the doctor observed, among other things, that:

> The claimant presents with rapid pressured speech, a loud voice, and agitation. The claimant is also depressed and anxious. The claimant's current medications include Paroxetine 20mg three at night time for depression and adjunctive therapy provided by Rexulti at 2mg from which the claimant has received significant benefits. The claimant reports improvements in mood and ability to function…The provider feels strongly that the *claimant requires psychotherapeutic intervention* in conjunction with psychotropic medication *with a therapist who can work through the deepening depression and anxiety* as well as the emerging medication dependence and medication seeking behavior. Mental status examination reveals that the claimant is tearful and anxious. The claimant exhibits a rapid, pressured speech with agitation. *The claimant has a significant increase in depression. The claimant also has frequent suicidal ideation on psychological testing*. The pain level is rated 8-10/10 in severity. The claimant has a PHQ-9 score of 26, indicating *extremely severe depression*. The claimant has a GAD-7 score of 21, indicating *extremely severe anxiety*. The current request is for a referral to a therapist (for addiction) x 10-12 sessions.

> …In this case, the claimant is receiving psychotropic medication management treatment, yet *depression is increasing and frequent suicidal ideation is reported*. The provider is concerned about medication seeking behavior….At this time, *given the increase in the claimant's symptoms despite medication management, the medical necessity of referral to a therapist is established*. Recommend partial certification of referral to therapist (for addiction) x 6 sessions….

(Deft's Exh. D-4, pp. 4-6, italics added.)

The WCJ's observations of applicant's behavior during trial on June 29, 2020 are consistent with the doctors' observations of applicant's depressed, anxious, and suicidal mental state during treatment. We are not convinced by defendant's claim that, in order to establish good cause to set aside the OACR, applicant was required to present a more recent medical determination of her extremely high levels of distress. Defendant does not explain how close to the settlement date said medical determination should have been in order to demonstrate good cause to set aside the OACR, and we decline to establish such a rule.

We also reject defendant's claim that "good cause" to set aside the OACR was not demonstrated where: (1) applicant was "properly represented by competent counsel who is still engaged in the practice of law and in good standing with the bar"; (2) applicant "waited over two months before dismissing her attorney and questioning her settlement award after she had already received and deposited her settlement"; and (3) applicant cashed the settlement check "with the full knowledge that she had resolved her case in its entirety." (Petition, pp. 6-7.) In so arguing, defendant compares this case to *Sutterfield v. Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1231 (*Sutterfield*) (writ denied).

In *Sutterfield*, applicant executed a C&R for $6,000. Applicant and his attorney signed the settlement, which was subsequently approved by the WCJ, who issued an OACR. However, 14 months after the settlement was approved, applicant petitioned to set aside the OACR, claiming that he was under "severe emotional distress" at the time that he signed the agreement and that he was incapacitated when he entered the settlement.

In that case, the WCJ declined to set aside the OACR based upon evidence that applicant was represented by competent counsel at the time of settlement; the settlement documents were properly signed by applicant, who admitted that his counsel discussed the settlement documents with him; and applicant waited for over a year before filing the petition to set aside the OACR. The WCJ also addressed applicant's claim that he was under the influence of mind-altering drugs

at the time of settlement, and that he was confused and depressed. The WCJ commented that, although the medical evidence confirmed that applicant was being treated for depression, the record did not support the conclusion that his depression and the taking of medication affected his ability to consider his actions and knowledgeably settle his case. The WCJ also noted that there was no evidence that applicant's counsel in any way misrepresented the terms of the settlement. The WCJ also expressed his doubts as to applicant's credibility during trial.

The facts of this case are not sufficiently similar to those in *Sutterfield* so as to support a similar conclusion. While applicant was represented by an attorney at the time of settlement, unlike *Sutterfield*, applicant stated that her attorney did not provide her with clear instruction regarding the settlement, and that there was very little discussion with her attorney on the matter. (SOE, p. 6.) Also unlike the applicant in *Sutterfield,* applicant waited only two months, rather than 14 months, to file her request to set aside the OACR, and explained that she did so "when she realized that she could not receive medical treatment," which, according to her testimony, she had repeatedly asked her attorney for. (SOE, pp. 6-7.) Lastly, here, the WCJ found that applicant's uncontradicted and unimpeached testimony was credible, and that it reflected that the settlement was secured by duress or undue influence. As discussed above, we must accept as true the intended meaning of evidence that is both uncontradicted and unimpeached. (*Garza, supra,* 3 Cal.3d at pp. 317-319; *LeVesque, supra,* 3 Cal.3d at p. 639.) For these reasons, we reject defendant's reliance upon *Sutterfield*.

Based the foregoing, we reject defendant's claim that the WCJ erroneously determined that there was good cause to set aside the OACR under section 5803.

As discussed above, removal is an extraordinary remedy rarely exercised. (*Cortez, supra,* 136 Cal.App.4th at p. 599, fn. 5.) The party seeking removal must show that the order it appeals "will result in significant prejudice [and/or]…irreparable harm." (Cal. Code Regs., tit. 8, § 10955.) We conclude that defendant has not made such a showing in this instance, where, upon reopening, it may conduct further discovery and develop the record to support its claim that the money that applicant received pursuant to the C&R was adequate.

To the extent that defendant contends that it is entitled to "repayment" of the settlement proceeds distributed under the C&R, we direct defendant to section 4909, which allows a

defendant to seek a credit under certain circumstances. (See *Maples v. Workers' Comp. Appeals Bd*. (1980) 111 Cal.App.3d 827 [45 Cal.Comp.Cases 1106].)

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board the Order issued by the WCJ on July 23, 2020 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 2, 2022

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

MARACHELLE JACKSON
YRULEGUI ROBERTS

AH/oo

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