WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RUTH GARCIA, *Applicant,* vs. OXNARD SCHOOL DISTRICT; YORK RISK SERVICES, *Defendants.*	Case No. ADJ9343873 (Oxnard District Office) **OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of the Award issued on June 11, 2015 by a workers' compensation administrative law judge (WCJ). The Award was issued pursuant to the parties' Stipulations with Request for Award in favor of applicant, *in pro per*, for 34% disability, payable at the rate of $188.40 per week starting October 10, 2013 for a total sum of $36,570.00, less credits for payments made, and future medical care.

Defendant contends that the Stipulations and Award should be rescinded and modified because the Award contains a calculation error and therefore lists an erroneous total sum for permanent disability. Defendant contends that the total sum listed in paragraph 3 of the Stipulations of $36,570.00 was based on a presumption that applicant was a maximum wage earner and therefore entitled to a maximum permanent disability rate of $230.00 per week; however, the parties stipulated to the rate of $188.40 per week, with a 15% decrease pursuant to Labor Code section 4658(d) and therefore, the total should have been $25,670.97.

We did not receive an answer from applicant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ which recommends that the Petition for Reconsideration be granted because it is internally inconsistent and the Award be amended to reflect a permanent disability sum equal to $29,955.00. The WCJ recommended that the Award not be amended to correct defendant's mistake regarding the omission of the Labor Code section 4658(d) adjustment.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will deny reconsideration.

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1] (*Weatherall*).) As defined in *Weatherall*, "A stipulation is 'An agreement between opposing counsel . . . ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*Weatherall, supra*, 77 Cal.App.4th at p. 1119.)

Rescinding a contract due to unilateral mistake of fact is an affirmative defense. (See Civ. Code, §§ 1567, 1568, 1577; *Architects & Contractors Estimating Service, Inc. v. Smith* (1985) 164 Cal.App.3d 1001, 1007–1008; California Civil Jury Instructions 330.) The party seeking to rescind the contract must prove that (1) the party was mistaken as to a material fact, (2) the opposing party knew of the mistake and used it to his advantage, (3) the mistake was not caused by the neglect of a legal duty on the party making the mistake, and (4) that the party would not have entered into the contract had it known of the mistake. (*Id.*) "Failure to make reasonable inquiry to ascertain or effort to understand the meaning and content of the contract upon which one relies constitutes neglect of a legal duty such as will preclude recovery for unilateral mistake of fact." (*Wal-Noon Corporation v. Hill* (1975) 45 Cal.App.3d 605, 615.)

Here, defendant seeks relief based on the affirmative defense of unilateral mistake. Applicant is proceeding *in pro per*, and based on the standard language of the Stipulation and Award, we are confident that defendant prepared the paperwork. Unfortunately, it appears that defendant failed to pay attention to the details necessary to calculate accurate permanent disability. Such a mistake in calculating the total permanent disability was the unilateral mistake of defendant. However, defendant did not file a petition to set aside the Award, and did not request a hearing before the Workers' Compensation Appeals Board to provide evidence of good cause to set aside or rescind based on its unilateral mistake. Without

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1 any proof in the record other than the identification of the mistake itself, we must deny defendant's

2 Petition for Reconsideration.

3 We would further note that based solely on the statement of facts contained in the Petition for

4 Reconsideration and assuming all those facts are true, we would still deny reconsideration because

5 defendant did not plead facts sufficient to grant relief for a unilateral mistake. First, defendant did not

6 allege that applicant *in pro per* was aware of defendant's calculation mistakes, or that she took advantage

7 of the mistake. Second, defendant failed its legal duty to make reasonable inquiry or to ascertain the

8 content of the stipulation prior to signing it.

9 Accordingly, the WCJ did not act in excess of his powers by approving the stipulations agreed to

10 by defendant, and we will deny defendant's Petition for Reconsideration.

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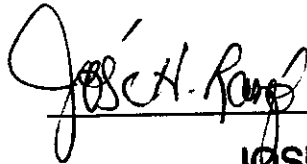
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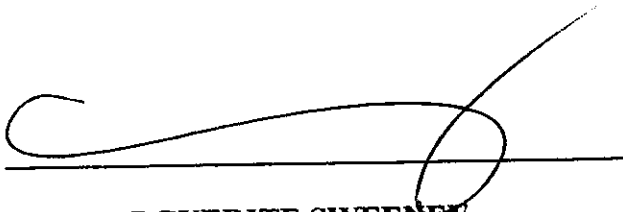**GARCIA, Ruth**   3

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Award issued on June 11, 2015 by a workers' compensation administrative law judge is **DENIED**.
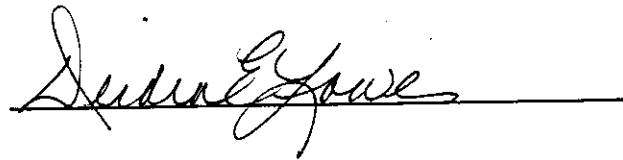
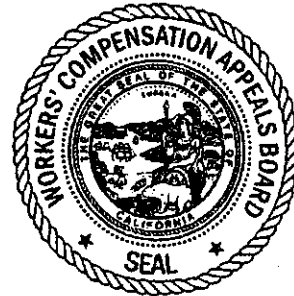**WORKERS' COMPENSATION APPEALS BOARD**

_____
JOSÉ H. RAZO

I CONCUR,

_____
MARGUERITE SWEENEY

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DEIDRA E. LOWE

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUG 2 8 2015

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

FLOYD, SKEREN & KELLY, LLP
RUTH GARCIA

AJF:mm

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