White v. City, 2023 Cal. Wrk. Comp. P.D. LEXIS 129

Workers' Compensation Appeals Board (Board Panel Decision)

May 15, 2023 Opinion Filed

W.C.A.B. No. ADJ16382508—WCJ Lawrence Keller (SFO); WCAB Panel: Commissioners Snellings, Dodd, Chair Zalewski

Reporter
2023 Cal. Wrk. Comp. P.D. LEXIS 129 *

Charles White, Applicant v. City and County of San Francisco, PSI, Defendant

Status:

CAUTION: This decision has not been designated as a "significant panel decision" by the Workers' Compensation Appeals Board. Practitioners should proceed with caution when citing to this panel decision and should also verify the subsequent history of the decision, as these decisions are subject to appeal. WCAB panel decisions are citeable authority, particularly on issues of contemporaneous administrative construction of statutory language [see *Griffith v. Workers' Comp. Appeals Bd. (1989) 209 Cal. App. 3d 1260, 1264, fn. 2, 257 Cal. Rptr. 813, 54 Cal. Comp. Cases 145]*. However, WCAB panel decisions are not binding precedent, as are en banc decisions, on all other Appeals Board panels and workers' compensation judges [see *Gee v. Workers' Comp. Appeals Bd. (2002) 96 Cal. App. 4th 1418, 1425 fn. 6, 118 Cal. Rptr. 2d 105, 67 Cal. Comp. Cases 236]*. While WCAB panel decisions are not binding, the WCAB will consider these decisions to the extent that it finds their reasoning persuasive [see *Guitron v. Santa Fe Extruders (2011) 76 Cal. Comp. Cases 228, fn. 7 (Appeals Board En Banc Opinion)]*. LexisNexis editorial consultants have deemed this panel decision noteworthy because it does one or more of the following: (1) Establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in other decisions, or modifies, or criticizes with reasons given, an existing rule; (2) Resolves or creates an apparent conflict in the law; (3) Involves a legal issue of continuing public interest; (4) Makes a significant contribution to legal literature by reviewing either the development of workers' compensation law or the legislative, regulatory, or judicial history of a constitution, statute, regulation, or other written law; and/or (5) Makes a contribution to the body of law available to attorneys, claims personnel, judges, the Board, and others seeking to understand the workers' compensation law of California.

Disposition: The Petition for Reconsideration is *denied*.

Core Terms

settlement, Reconsideration, parties, Addendum, workers' compensation, workers' compensation benefits, right knee

Headnotes

Settlements—Compromise and Release Agreements—Scope of Settlement—WCAB, denying reconsideration, affirmed WCJ's finding that Compromise and Release (C&R) agreement settling applicant's claim for industrial injury to his knees for period 4/14/2016 to 4/14/2017 did not bar applicant's subsequent claim for earlier injury to his right knee during period 9/16/2012 through 12/30/2014,

notwithstanding language in C&R Addendum stating that settlement resolved all claims related to applicant's employment with defendant, when WCAB found that paragraph 3 on pre-printed C&R limits settlement to dates of injury listed in paragraph 1 of C&R, which in this case was period 4/14/2016 to 4/14/2017, that language in paragraph 3 nullified language in Addendum seeking to settle claims not listed in paragraph 1, that there was no need to inquire into parties' intent in this case with respect to settlement because clause in Addendum was rendered void by plain restriction of paragraph 3, and that because applicant's settlement was for different date range, C&R did not settle applicant's right knee injury claim for period 9/16/2012 through 12/30/2014. [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d §§ 29.01, 29.02[3]; Rassp & Herlick, California Workers' Compensation Law, Ch. 18, § 18.01.]

Counsel

[*1] For applicant—Shatford Law

For defendant—City and County of San Francisco

Panel: Commissioner Craig Snellings; Commissioner Katherine Williams Dodd; Chair Katherine A. Zalewski

Opinion By: Commissioner Craig Snellings

Opinion

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, in part, we will deny reconsideration.

We note that defendant's claim that they will suffer significant prejudice, and irreparable harm absent relief from the board recites the standard of review upon removal, and does not apply when seeking reconsideration of a final order. Final appealable decisions include ‘threshold’ issues that are basic to establishing liability for workers' compensation benefits, whether or not all issues are resolved or there is an ultimate decision on the right to benefits.“ (*Rea v. Workers' Comp. Appeals Bd. (Milbauer) (2005) 127 Cal. App. 4th 625, 642 [25 Cal. Rptr. 3d 828, 70 Cal. Comp. Cases 312]*.) The Court of Appeal has defined a ”final order“ as ”any order which settles, for purposes of the compensation proceeding, an issue critical to the **[*2]** claim for benefits, whether or not it resolves all the issues in the proceeding or represents a decision on the right to benefits.“ (*Maranian v. Workers' Comp. Appeals Bd., 81 Cal. App. 4th 1068, 1075, 97 Cal. Rptr. 2d 418, 65 Cal. Comp. Cases 650,]*.)

Thus, utilizing the standard of review for reconsideration and based on the analysis provided in the WCJ's Report, which we adopt and incorporate in part, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

Commissioner Craig Snellings

I concur,

Commissioner Katherine Williams Dodd

Chair Katherine A. Zalewski

* * * *

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

Lawrence Keller, Workers' Compensation Judge, hereby submits his report and recommendation on the Petition for Reconsideration filed herein.

[…]

FACTS

Background.

In this matter, ADJ16382508, Charles White, while employed during the period September 16, 2012 through December 30, 2014, by the City and County of San Francisco, claims to have sustained injury arising out of and in the course of employment to his right knee. Mr. White had previously settled by C&R a claim for a cumulative trauma (CT) injury claim through April 14, 2017 to the knees in case ADJ14546729. The key issue at trial was **[*3]** whether, by including a start date of April 14, 2016 in the C&R in ADJ14546729, the parties intended to limit the CT period settled in ADJ14546729 to one year. The defendant asserts that the settlement in ADJ14546729 covers the claim for the earlier CT period asserted by applicant in the current case.

Evidence at Trial.

Defendant's Exhibit C: Stipulations with Request for Award and Award in ADJ8119112 dated November 1, 2013.

Prior to the cumulative injuries, the applicant had a specific December 1, 2009 injury to the right knee while employed by the San Francisco Municipal Railway (MUNI). The claim was settled November 1, 2013 with 18 percent permanent partial disability, and a need for future medical care. The applicant had returned to employment with MUNI.

Defendant's Exhibit A—Compromise and Release and Order Approving in ADJ14546729 dated March 28, 2022.

Subsequently the applicant claimed a CT injury, which was assigned case number ADJ14546729. An Order Approving the C&R in ADJ14546729 was issued March 28, 2022. The C&R involves the same parties as the case at issue, the employee was represented by the same attorneys, and the attorney for defendant was the same as the case at issue. **[*4]** Parties used DWC-CA form 10214 (Rev. 11/2008) for the C&R. The injury is identified in paragraph 1 on page 3 as a cumulative injury with listed start date of April 14, 2016 and an end date of April 14, 2017. The body parts are identified only by numbers 513 and 999.

In the comments section of paragraph 9, the parties incorporated Addendum A. Addendum A of the C&R, which is signed by applicant, applicant's attorney, and defense attorney, states in relevant part:

> “This settlement is based on negotiations between the parties as well as a mutual desire to avoid additional hazards and delays of continued litigation.
>
> This is a full and final settlement of a denied claim with affirmative defenses. Defendant does not admit liability for this denied claim and defendant requests a Thomas finding as part of the settlement. Applicant is not eligible for the SJDB and applicant has seperated [sic] his employment with defendant (CCSF/MTA).
>
> This settlement resolves any and all claims for any and all species of Workers' Compensation Benefits related to applicant's employment with defendant.“ (Defendant's Exhibit A: Compromise and Release and Order Approving in ADJ14546729 dated March 28, 2022.)

Defendant's [*5] Exhibit H: Denial notice dated July 14, 2022.

In the case at issue, and after the Order Approving the C&R in ADJ14546729, the applicant claimed a cumulative injury to his right knee during the period September 16, 2012 through December 30, 2014. Defendant denied the applicant's claim in the current case, ADJ16382508, on July 14, 2022. The denial was based on a statute of limitations defense, a lack of medical evidence, and the assertion that in the March 28, 2022 C&R the applicant "agreed to resolve any and all claims for any and all species of workers' compensation benefits related to your [the applicant's] employment."

Defendant's Exhibit D: Report of Agreed Medical Examiner J. Graham Bray, M.D., dated August 26, 2013.

Defendant also submitted an August 26, 2013 report of J. Graham Bray who served as Agreed Medical Evaluator (AME) for the applicant's December 1, 2009 right knee injury claim. The report provided work restrictions and a provision for future medical care including that additional knee revision surgery on the right knee was anticipated. (Defendant's Exhibit D at page 23.) However, Dr. Bray did not comment on the two CT claims at issue in ADJ14546729 or ADJ16382508.

Findings [*6] of Fact—February 24, 2023.

After consideration of all of the evidence I concluded that the approved C&R in ADJ14546729 was limited to the date range April 14, 2016 through April 14, 2017 specified in paragraph 1 of the C&R. Because the claim now at issue in ADJ16382508 is for a CT outside that date range, I determined that the approved C&R in ADJ14546729 does not bar the applicant's current claim for the injury in ADJ16382508.

Contentions on Reconsideration.

In its Petition for Reconsideration, Defendant contends the plain language of the approved C&R in ADJ14546729, and in particular the language in the addendum that the "settlement resolves any and all claims for any and all species of Workers' Compensation Benefits related to applicant's employment with defendant," settled any potential CT claim against the City and County of San Francisco. Defendant asserts that because the language in the Addendum was reviewed and approved by the workers compensation judge in ADJ14546729, the addendum should be considered in determining if the C&R settled the current claim. Defendant contends I engaged in an improper second review of the terms of the C&R and found them unenforceable. Defendant **[*7]** contends the approved C&R in ADJ14546729 included settling applicant's rights to bring any other workers' compensation claim against the City and County of San Francisco, and thus bars the current claim.

DISCUSSION

As stated in my Findings of Fact:

"Parties are not afforded unlimited discretion in the terms of their settlement. Constraints include the language contained in the Compromise and Release form, including paragraph 3 on page 5 of the pre-printed DWC-CA form 10214 (Rev. 11/2008) which states, "This agreement is limited to settlement of the body parts, conditions, or systems and for the dates of injury set forth in Paragraph No.1 despite any language to the contrary in this document or any addendum." Paragraph1 1, on page 3 of the Compromise and Release form instructs parties to, "State with specificity the date(s) of injury(ies) and what part(s) of body, conditions or systems are being settled." In panel decisions which are not binding here, but are instructive of the opinion of some of the Appeals Board Commissioners, the Appeals Board has generally found that the language of paragraph 3 serves to nullify language in an addendum seeking to settle claims which are not listed **[*8]** in paragraph 1. (*Paulina Rodriguez Orellana v. United Care Services, Inc. (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 761*; *Rodriguez v. Air Serv Corp., (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 728*; *Whitson v. Dept. of Social Services-In Home Supportive Services, (2017) 2017 Cal. Wrk. Comp. P.D. LEXIS 507, page 10*.)

While a workers' compensation judge may inquire into the intent of the parties in reaching a settlement, a judge may not impose an agreement which does not exist. “The legal principles governing compromise and release agreements are the same as those governing other contracts … . A court has no authority to fashion a compromise and release agreement to which the parties have not themselves agreed.” (*Burbank Studios v. Workers' Comp. Appeals Bd. (Yount) (1982) 134 Cal. App. 3d 929, 935, 184 Cal. Rptr. 879*.)” (February 24, 2023 Opinion on Decision, pages 4–5.)

Defendant cites to the writ denied case of *Stevens v. Workers' Comp. Appeals Bd., (2013) 78 Cal. Comp. Cases 1206*, in support of their position. In *Stevens* the WCAB found the applicant's claim for a shoulder CT from August 4, 1995 through October 17, 2002 was barred by a prior C&R for a CT to the shoulders from December 1, 1999 through May 3, 2001. Injury arising out of and in the course of employment (AOE/COE) was also an issue in *Stevens*. The WCAB also found there was no medical evidence to support the shoulder CT from August 4, 1995 through October 17, 2002. The current case at issue is distinguishable from the *Stevens* case in that the C&R in ADJ14546729 had a date range April 14, 2016 through April 14, 2017, and the claim now at issue is for a CT outside that date range. In *Stevens* the prior C&R was for **[*9]** a date range within the applicant's new CT claim.

Defendant argues that the language of the addendum in the approved C&R in ADJ14546729 that the “settlement resolves any and all claims for any and all species of Workers' Compensation Benefits related to applicant's employment with defendant,” settles all potential workers' compensation claims against the defendant. This asks for a selective reading of that C&R. To find that this phrase meant all potential workers' compensation claims are resolved by the C&R asks that other elements of the agreement must be ignored. Defendant's position asks that the language of paragraph 3 be disregarded.

Defendant appears to argue that the language reflecting a general release of any possible workers' compensation benefits during employment with the City and County of San Francisco in the Addendum of the C&R in ADJ14546729, whether known or unknown. That position is in conflict with reading of paragraph 3 which limits the C&R to the body parts and dates of injury identified in paragraph 1 of that settlement. Paragraph 1 of the approved C&R specifies, and thus limits, the injury settled to a CT from April 14, 2016 through April 14, 2017. By the filing **[*10]** of a new CT claim, applicant has clearly expressed that he did not intend to settle unfiled injury claims. It therefore appears the parties differed in their intent, or agreed to contradictory terms.

My opinion is not upsetting the Order Approving the C&R in ADJ14546729, and makes no opinion on the settlement of that case. My opinion is limited to determining whether the terms of the approved C&R in in ADJ14546729 bar the current claim. After review of Defendant's Petition for Reconsideration, the evidence, and my February 24, 2023 Findings of Fact, it remains my opinion that there is not a need to inquire into the intent of the parties, because the clause in the Addendum is rendered void by the plain restriction of paragraph 3 limiting the settlement to the dates of injury in paragraph 1. Because it is for a different date range, the settlement by Compromise and Release in ADJ14546729 does not reflect a settlement of the CT claim in ADJ16382508.

RECOMMENDATION

For the foregoing reasons, I recommend that the Petition for Reconsideration of defendant, filed herein on March 14, 2023, be DENIED.

Lawrence Keller

Workers' Compensation Administrative Law Judge

Dated: March 28, 2023

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