WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ANNETTE VALDEZ, *Applicant*

vs.

SOUTHERN CALIFORNIA GAS COMPANY, Permissibly Self-Insured, *Defendant*

Adjudication Number: ADJ1991445 (POM 0231941)
Pomona District Office

OPINION AND DECISION
AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.[1] We now issue our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on May 10, 2022, wherein the WCJ found that there was no good cause to set aside the February 28, 2002 Order Approving Compromise & Release (OACR).

Applicant contends that there is good cause to set aside the OACR because she was not competent at the time that she signed the Compromise and Release (C&R).

We received an Answer from defendant.

We received a Report and Recommendation (Report) from the WCJ, recommending that the Petition for Reconsideration be denied.

We have considered the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report. Based on our review of the record and for the reasons discussed below, we will affirm the F&O.

In his Opinion On Decision, the WCJ stated in pertinent part as follows:

> Consistent with the Commissioners' opinion in their 10/12/21 order dismissing the Applicant's petition for reconsideration, the question of whether the Order Approving C&R (OAC&R) dated 2/28/02 should be set aside was the only issue for the trial which went forward on 2/28/22. All other issues were bifurcated by order of the court.

[1] Commissioner Sweeney, who was on the panel that granted reconsideration to study this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

Applicant contends that she was incompetent at the time she signed the C&R on 1/11/02 settling this particular case. The C&R was approved by the court on 2/28/02. Said C&R was for $2,500 and indicates that this case was a denied claim. The C&R papers include an addendum which indicates that the Defendant was denying that the Applicant's alleged psyche injury arose out of and in the course of her employment. The C&R papers also include a request for a Thomas finding stating that the QME reports by Dr. Carl Marusak dated 12/18/97, and Dr. Perry Maloff dated 2/19/98, which were requested by Defendant and Applicant respectively, found no industrial injury. Both of these medical reports are contained in filenet. Applicant was represented by an attorney at the time the C&R was approved, but she dismissed her attorney as of 3/9/17 and has been representing herself since then.

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In support of her allegation that she was incompetent at the time the C&R was signed, Applicant offered four exhibits. Exhibit 1 is a benefit verification letter from the Social Security Administration dated 10/15/21. This letter shows the amount of Applicant's monthly Social Security allowance and indicates that Applicant is entitled to monthly disability benefits. However, this letter does not appear to offer anything helpful to determine whether the OAC&R of 2/28/02 should be set aside because it does not indicate anything about whether Applicant was incompetent at the time the C&R was signed.

Exhibit 2 is a termination or leave of absence form dated 12/31/02. It indicates that Applicant was discharged from the Gas Company effective 12/20 or 12/21/02. The stated reason for the discharge was that Applicant had been on long term disability for five years. The form was signed by Jim Rapose on 12/31/02. Again, this letter does not appear to offer anything helpful to determine whether the OAC&R of 2/28/02 should be set aside because it does not say anything about whether Applicant was incompetent at the time the C&R was signed.

Exhibit 3 is a letter from the Gas Company to the Applicant dated 12/30/02. It explains that she was terminated from her job on 12/20/02 pursuant to the terms of her Disability Benefit Plan. Again, this letter does not appear to offer anything helpful to determine whether the OAC&R of 2/28/02 should be set aside because it does not say anything about whether Applicant was incompetent at the time the C&R was signed.

Exhibit 4 is a letter from the Gas Company to the defense attorney dated 1/3/22. This letter merely indicates that they are enclosing a copy of letters regarding long term disability dated 12/30/02 and 4/2/02. Again, this letter does not appear to offer anything helpful to determine whether the OAC&R of 2/28/02 should be set aside because it does not say anything about whether Applicant was incompetent at the time the C&R was signed.

In addition to these exhibits, Applicant testified under oath at the trial on 2/28/22. She testified that she was not in her right mind at the time she signed the C&R in 2002. She was not taking the right medications. She is currently taking Haldol. Beforehand, however, she took something else which put her to sleep. Now that she is taking Haldol, she is better. At the time of the C&R, she was paranoid and schizophrenic and she was fearful of pursuing her case because her coworkers might get mad and they knew where she lived. She said she went to court one time and asked how she could reopen her case and was told that she would have to show how she was incompetent at the time she signed the C&R. It is unknown when exactly this occurred or who told the Applicant this.

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[Here, we] simply lack substantial medical evidence that Applicant was incompetent at the time the C&R was signed and approved. . . .

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As the Commissioners have explained in the case of *Jose Salazar v. James Jones Company, Inc*., 2020 Cal.Wrk.Comp.P.D.Lexis 61:

> "[T]here is a strong public policy in favor of the finality of judgments and only in exceptional circumstances should relief be granted." *In re marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1071. Extrinsic fraud or mistake exists when the aggrieved party has been kept in ignorance of the action or proceeding, or in some other way … prevented from presenting his claim or defense. (*Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 471.
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> To qualify for equitable relief from the judgment, the moving party must pass a "stringent" test that includes articulating a satisfactory excuse for not presenting a claim or defense to the original action and demonstrating diligence in seeking to set aside the judgment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982.) In determining whether to set aside a judgment on grounds of extrinsic fraud or mistake, "self-representation is not a ground for exceptionally lenient treatment." (*Rappleyea v. Campbell* (1994) 8 Cal.4th at p. 94.) Applicant, as the moving party, had the burden of proof both with regards to showing an adequate excuse regarding why he did not fully present his claim, and with regards to demonstrating diligence to set aside the Award. …
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> "Relief is denied, however, if a party has been given notice of an action and has not been prevented from participating therein. He has had an opportunity to present his case to the court and to protect himself from mistake or from any fraud attempted by his adversary." (*Kulchar*, 1 Cal.3d at p. 472.) …

> There is a strong policy in favor of the finality of awards after the expiration of the Labor Code section 5803 and 5804 periods. Applicant did not show how he was shut out of court … nor did he show diligence in beginning to prosecute his case over ten years after his last court appearance.

The *Salazar* case involved an applicant who allegedly did not realize his claim was settled while he was unrepresented and later sought to set aside that settlement more than 10 years later after he obtained an attorney. Here, on the other hand, there is no evidence that Applicant did not know about her settlement. She was also represented by an attorney. And the amount of time that passed after the settlement was approved in Applicant's case on 2/28/02 until she attempted to set aside her award greatly exceeded the amount of time that passed in the *Salazar* case. It is now more than 20 years since the Applicant's settlement was approved.

In conclusion, the court sympathizes with the Applicant but the court must follow the law. . . . [T]here is a lack of substantial evidence proving Applicant was indeed incompetent at the time the C&R was signed and approved. That leaves extrinsic fraud or mistake as the only possible avenue for Applicant to have the OAC&R set aside now. But here too, there is a lack of sufficient evidence that Applicant has satisfied the stringent test discussed above which is required to demonstrate extrinsic fraud or mistake. While Applicant offered the excuse of being fearful of her coworkers as the reason for entering into a C&R agreement which she later regretted, this does not adequately show how she was ignorant of her case, or shut out of court, or prevented from fully presenting her case. Also, there is simply no demonstration of adequate diligence in seeking to set aside the OAC&R. Furthermore, the court reiterates that even if the court had set aside the OAC&R, this would not automatically entitle the Applicant to any benefits because she would still have to prove that the alleged psyche injury was a compensable case. The court already explained above that both the Defendant's doctor and the Applicant's own doctor found the case to be non-industrial. Based on this entire discussion, the Applicant's request to set aside the OAC&R dated 2/28/02 is accordingly denied. If Applicant disagrees with this decision, she has 20 days to file a new petition for reconsideration.

(May 10, 2022 Opinion on Decision, pp. 2-9.)

In his Report, the WCJ stated in pertinent part as follows:

INTRODUCTION

This case involves an allegedly injured worker, Annette Valdez, a meter mechanic who was 34 years old on the last day of the alleged Cumulative Trauma (CT) period, when she allegedly suffered injury to her psyche due to alleged harassment.

Applicant, while represented by an attorney, settled her claim via Compromise & Release for $2,500, which was approved on 2/28/02. . . .

Subsequent to the Commissioners' Opinion and Order Dismissing Petition for Reconsideration dated 10/12/21, the matter proceeded to trial on 2/28/22, on the sole issue of whether the Order Approving Comprise & Release (OAC&R) dated 2/28/02 should be set aside, the resulting decision from which Applicant now appeals. . . .

Applicant contends that the findings of fact do not support the order, decision, or award. She attached a brief statement that says: "My work injury is emotional and that should prove or support I was incompetent when I signed the compromise and release agreement. I can try to provide additional record [from] the Gas Company to support the harassment I suffered at work that also caused me to become incompetent."

. . . Based on the discussion below, the court recommends that the Applicant's Petition for Reconsideration be denied.

II
DISCUSSION

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Case law has defined incompetence as "not insanity, but rather inability to properly manage or take care of oneself or property without assistance." *County of Santa Clara v. WCAB (McMonagle)* (1992) 57 CCC 377, 379 (writ denied). It has been held that the term does not apply to physical inability but rather to mental incompetence. ... *Fox v. IAC* (1943) 8 CCC 194, 195 (writ denied). Medical evidence is required to establish incompetence. *Sun Indemnity Co. of New York v. IAC (McKinney)* (1948) 13 CCC 82, 85; *Lamin v. City of Los Angeles Police Department* (2004) 69 CCC 1002, 1005. The statute of limitations will be tolled if the court finds sufficient psychological impairment such that the injured worker is incapable, or substantially compromised. *County of San Bernardino v. WCAB (Spencer)* (1996) 61 CCC 860 (writ denied); *Feeley v. Southern Pacific Transportation Co*. (1991) 234 Cal.[App.]3d 949.[2] Any such decision must be based on substantial evidence.

The court is of the opinion that there is insufficient proof of incompetence at the time the Applicant's case settled. The Applicant's settlement was based on two QME reports, one obtained by Applicant, which was Dr. Perry Maloff, dated 2/19/98 (EAMS Doc ID no. 63606874) and one by Defendant, Dr. Carl Marusak, dated 12/18/97 (EAMS Doc ID no. 63606876). Both reports found the Applicant's psyche claim to be non-industrial. Neither of these reports specifically stated that

[2] There appears to have been a typographical error in the citation to *Feeley v. Southern Pacific Transportation Co*., the correct citation is *Feeley v. Southern Pacific Transportation Co*. (1991) 234 Cal.App.3d 949.

> Applicant was incompetent or incapable of handling her affairs, although they do discuss significant psychological issues.
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> Dr. Marusak diagnosed her with paranoid schizophrenia and post traumatic stress disorder on p. 19 of his report, and borderline personality disorder on p. 20. On p. 21, he writes "She is able to function quite well from time to time, but generally finds herself in bizarre and inappropriate interpersonal relationships." He wrote on p. 22 that "A minimal pre-condition of her returning to the workplace would be ongoing psychopharmacologic management on a monthly basis." Further down that page, he writes "There is severe, indeed profound, disability when psychotic, delusional symptoms emerge." He listed her factors of disability on p. 22 as non-industrial delusions, paranoia, and anxiety. On p. 23, he discussed how the Applicant would have "difficulty functioning in any kind of interpersonal environment due to her psychosis." But he also said she could likely continue working "with a modicum of interpersonal involvement." He apportioned her disability on p. 23 entirely to non-industrial paranoid schizophrenia and borderline personality disorder. Not once does the doctor say that she was incapable of handling her affairs.
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> Dr. Maloff wrote on p. 6 of his report, more than a year after Dr. Marusak's report, that he was generally in agreement with Dr. Marusak, although he found it unlikely that Applicant was suffering from borderline personality disorder. He concluded by saying that the Applicant "does indeed require intensive psychiatric treatment and as of last week had been admitted to Charter Oak Hospital in the Intensive Treatment Unit due to paranoid psychosis." This report was written on 2/19/98, which was about four years prior to the Applicant's OAC&R. The court believes the fact that Applicant was admitted to the hospital for paranoid psychosis in February 1998 could tend to show the Applicant was incompetent at that particular time. But there is no evidence in the record indicating this incompetence persisted until her case settled four years later.
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> [Additionally], the court found that Applicant was not able to have the OAC&R set aside on this ground either because she did not demonstrate how she met the stringent requirements needed to prove extrinsic fraud.

(June 13, 2022 Report and Recommendation, pp. 1-5.)

Although the Labor Code does not define incompetency, the Appeals Board has previously considered "incompetency" in workers' compensation proceedings. In *County of Santa Clara v. Workers Compensation Appeals Bd. of California (McMonagle)* (1992) 57 Cal.Comp.Cases 377, the Appeals Board noted that the "incompetency" an applicant was required to show to establish good cause to set aside an Order of Dismissal is "the lack of ability or fitness to make the decision

to request dismissal of her workers' compensation claim at the time she made that request." (*County of Santa Clara v. Workers Compensation Appeals Bd. of California (McMonagle)* (1992) 57 Cal.Comp.Cases 377, 378 (writ den.), emphasis added.) Based on the record in *McMonagle*, the Appeals Board defined incompetency "as not insanity, but rather inability to properly manage or take care of oneself or property without assistance." (*McMonagle, supra*, at 379.)

Moreover, a finding of incompetence must be supported by substantial medical evidence. (*Lamin v. City of Los Angeles* (2004) 69 Cal.Comp.Cases 1002, 1005; see also Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) Thus, in the absence of substantial medical evidence of injured worker's inability to properly manage or to take care of them self or their property without assistance, they are presumed competent.

Here, after careful consideration of the record, we agree with the WCJ that applicant did not meet her burden to show that she was incompetent at the time that she signed the C&R. Additionally, we agree with the WCJ, that on the record before us, there is no evidence that the agreement was based on fraud.

Accordingly, we affirm the Findings and Order issued by the WCJ on May 10, 2022.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings & Order issued by the WCJ on May 10, 2022 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 24, 2024

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

ANNETTE VALDEZ
MICHAEL SULLIVAN & ASSOCIATES

JB/*cs*

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