

Procedurally, the WCJ must either approve or disapprove the C&R or set it for hearing on adequacy. In *Whitworth v. Good Samaritan Hospital*, 28 CWCR 19 (BPD-1999) the WCJ ordered a new QME evaluation to develop the record several months after the C&R was filed. The preferred procedure explained in *Carter v. County of Los Angeles* 51 CCC 245 (1986) is for the WCJ to set a hearing on adequacy and thereafter issue Findings and Award if the C&R is disapproved. If the record is found to lack substantial evidence at hearing, the court is empowered to then seek the procurement of additional evidence in a manner consistent with *Tyler v. WCAB*, 62 CCC 924 (1997) and *McClune v. WCAB*, 63 CCC 261 (1998). The CWCR editor noted that Administrative Director Richard Gannon adopted the recommendations of a task force of senior WCJs and published a uniform set of information guidelines for parties submitting settlement documents. These guidelines may be obtained from the WCAB district offices or downloaded from www.dir.ca.gov/DWC/setguide/pdf.

*§15:36 Reasons for Decision -
LC §5313*

In reaching a decision approving or disapproving a settlement agreement, the Board presumably must (in accordance with LC §5313) state “the reasons or grounds upon which the determination was made.” In seeking an expeditious approval of a C&R, the parties will frequently stipulate to a waiver of LC §5313. However, in light of cautions enumerated by the National Study Commission, the judicial officer should likely make some written indication of the deliberation process used in reaching approval, so that the approval order does not take on the appearance of a pro forma rubber stamp. In almost all cases, however, a statement of reasons need be little more than the ultimate conclusion that the C&R appears to be fair and

accompanied with certified checks or money orders payable to applicants and lien claimants. [WCAB Policy and Procedural Manual §6.6.5.]

The Order Approving a C&R in an uninsured employer case must contain an award against the uninsured employer, and not the Uninsured Employer’s Fund. Procedures for settling with the UEF, with notice of intention to the appearing or served uninsured employer are set forth in LC §3715(e). [See discussion of Uninsured Employer’s Fund at Chapter 13.]

*§15:38 Request for Attorney’s
Fee*

The C&R form (line number 9 on page 2) has space for a request for an attorney’s fee. The dollar amount of the fee requested should be inserted. In most cases the applicant should presumably understand the prospect of an attorney’s fee being deducted from the compensation proceeds in light of the disclosure statement required to be executed by the attorney and client under LC §4906(e) and ADR §10134-10135. [See Chapter 17.] The amount of the fee requested should be inserted before the employee signs the document for the obvious reason that the amount of the fee will be deducted from the gross proceeds of the settlement awarded to the employee. So that there is no question in this regard, a suggested practice where there is likely to be any misunderstanding is to have the applicant sign a separate form to be attached to the C&R agreement stating:

“I have no objection to my attorney, _____, receiving the sum of _____, for services rendered, if the Board deems that amount to be a fair and reasonable attorney fee.” [See also BR §§10774-10779.]

C&R at an attorney's office. [*Rosas-Olmeda v. SCIF*, 22 CWCR 116 (BPD-1994) (allowed); *Gonzales v. SCIF*, 22 CWCR 287 (BPD-1994) (disallowed).]

Clearly, such fees would be allowable if incurred at a hearing to explain the significance of the C&R to the non-English speaking litigant.

*§15:40 Expediting Approval by
Filing Proposed Orders
Approving C&R simulta-
neously with C&R*

Because of the great flood of paper inundating Board offices throughout the state, parties often do not receive immediate approval of their settlement papers. One way to expedite approval is to furnish the Board with proposed completed forms of Orders Approving Compromise and Release. Proposed order forms may be obtained from local Board offices.

The Board is now in the process of establishing uniform forms as required by LC §5500.3, as no local office or judge may require forms or procedures other than as established by the Appeals Board. Some WCJ's throughout the state, however, may have a personal preference regarding the particular forms of orders which they feel should be used. As a matter of courtesy to such WCJ's, and perhaps to expedite the approval of their client's settlement papers, some familiarity with the preference of the local office or WCJ, although not *required*, may be helpful.

FORMS: See the following forms at the end of the chapter:

- 15.3 Order Approving Compromise and Release (DIA WCAB Form 16)
- 15.4 Opinion and Order Approving Compromise and Release
- 15.5 Characterization of Settlement Proceeds

*§15:41 Expediting Approval -
"Rotation" and "Walk
Through"*

WCAB Policy and Procedural Manual §6.6.2, issued December 18, 1995, requires the PJ of each office to divide equally among the WCJ's in the office the settlements that are filed *before* any hearing. When this assignment is made of the settlements received by mail or by deposit in the filing basket located at the front counter of each district office, the assignments are commonly referred to by the Board as "rotation." Upon assignment, the WCJ is to approve, or take appropriate action on the proposed settlement within 15 days. Otherwise, the files are returned to the PJ.

Settlements filed in cases where hearings are pending are to be referred to the WCJ to whom the case is assigned. When the parties present at the hearing indicate a settlement has been reached, "they should be encouraged to prepare and submit and Compromise and Release Agreement or Stipulation with Request for Award at that hearing rather than to continue the matter or to take it off calendar." If the WCJ determines that the C&R proposed is not adequate, or for any other reasons it is not approved at the hearing, "the hearing should go forward as scheduled."

Every district office has established a "walk-through" program approved by the Assistant Chief which provides for a 1-visit approval of a settlement with a file number or a maximum of 2-visit approval of a settlement which has no case number assigned. The walk-through program may consist of the following:

1. All judges accepting walk-through settlement by Compromise and Release or Stipulations With Request for Award each day.
2. Having one or more judges, depending on the district office size, assigned each day to accept walk-through settlement by Compromise and Release or Stipulations With

Once a case has been assigned to a particular judge for hearing or for review of a settlement, that judge remains charged with the responsibility of review. The rotation and walk through procedures are restricted to unassigned cases to discourage "judge shopping."

[§§15:42-15:49 Reserved]

C. Legal Effect of C&R

§15:50 Nature of Injury Settled

Settlement of One Part of Body Does not Preclude Claim to Another Part

Upon approval of the settlement agreement, the employer and carrier are absolved of all further liability, including all claims and causes of action "whether now known or ascertained, or which may hereafter arise or develop as a result of said injury . . ." [Par. 3, DIA WCAB Form 15, p. 1.]

The language of the settlement, as agreed to and/or drafted by the employer or carrier will be construed against the defendants with respect to the description of the injury which is being settled by the parties. In *SCIF v. WCAB (Bias)*, 43 CCC 845 (W/D-1978). The C&R recited that it was settling "injuries to heart, and as described in the medical reports on file." The release was construed as not settling an alleged back claim which the same employee had with the same employer even though some of the medical reports referenced the back injury because the compromise and release did not specifically mention the back as a body part subject to the release.

Along these lines, in *Bekins Protection Service v. WCAB (Eckert)*, 51 CCC 77 (W/D-1986), the employee settled a claim for cumulative injury for a period of repetitive trauma resulting in an injury to his psyche, the only part of the body listed in the settlement papers. Following the employee's death as a result of a fatal heart attack, his dependents pursued a death claim for a cumulative heart injury

dependents. [See also *City of Santa Maria v. WCAB (Hicks)*, 53 CCC 419 (W/D-1988) (settlement of a cumulative psychiatric injury did not bar a later claim for a cumulative injury to the employee's heart and lungs during the same period of cumulative exposure, despite the standard language in the C&R that the settlement was a release of all claims whether known or unknown); *UniRoyal Goodrich Tire Co. v. WCAB (Hurt & Crowders)*, 55 CCC 259 (W/D-1991) (settlement in 1978 of a 1946-1973 cumulative injury for any and all injuries to the employee's eyes, ears, internal organs, musculo-skeletal system sustained as a result of exposure to the work environment did *not* bar a later claim filed in 1988 for a cumulative injury as a result of alleged exposure to asbestos during the same period of employment).]

Compare Where Intention to Settle Injury to Body Parts Later Claimed as Separate Injuries

On the other hand, where it is clear from the record in the case generally, including the medical reports, that the parties intend by the settlement of a particular injury to include a number of other specific parts of the body affected, the settlement will be found effective as to all those parts despite sloppy draftsmanship of the settlement papers. In *Key v. 20th Century Fox Film Corp.*, 75 VN 52690 (Unpub BPD-1982), applicant's original application was for a knee and back injury; but the C&R described the present disability as "instability of the left knee joint." The Board found the applicant barred from pursuing a claim for further back problems, in that the C&R despite the language, was intended to cover both the knee and back as "different aspects of the same injury."

Similarly, in *City of Anaheim v. WCAB (Davis)*, 128 CA3d 200, 47 CCC 52 (1982), applicant settled his industrial claim for colitis for a period of employment from September, 1960 through September, 1974. Thereafter he

See *McClatchey v. WCAB*, 61 CCC 1075 (W/D-1996), where a 2-1 Board Panel decision that applicant's settlement of a specific injury case expressly involving a hernia also settled applicant's claim for later developing leg and back problems apparently resulting from the same specific event was upheld. Applicant was injured while attempting to move a 350 lb - 400 lb electrical box on May 19, 1993 which resulted in a hernia requiring surgery. Because of hernia pain, applicant could not continue in his old job and underwent vocational rehabilitation. The settlement of the 5/19/93 injury was expressly stated to resolve a "bilateral inguinal hernia." An addendum on the C&R stated that the parties intended that the agreement should apply to "all unknown or unanticipated injuries and damages resulting from such accident, casualty, event and/or employment." Applicant's claim for further injury to his back and leg was thereafter heard by a WCJ who ruled that the C&R was not a bar to the prosecution of such a claim. The Board reversed based on the language of the quoted addendum, holding that it was clear that the parties intended to settle all consequences of the May 19, 1993 incident. One commissioner dissented on the grounds that the back and leg problem should have constituted at "latent" injury unknown to the parties at the time of the compromise and release agreement. [See discussion of Date of Injury in Chapter 18.]

In *Tasden Co. v. WCAB (Wilder)*, 62 CCC 793 (W/D-1997), applicant settled a specific back injury of 10/91 with one carrier by a C&R whose language included the phrase that the agreement settled "all injuries during the entire period of employment." This language was found not to preclude the prosecution of another back injury which occurred on January of 1992 while the employer was insured by another carrier, despite the fact that the first C&R recited both case numbers because the first C&R related only to the initial back injury and the subsequent carrier did not participate.

plate C&R language releasing the employer from liability for injury to the lungs and cardiopulmonary system was not effective to eliminate future liability for asbestosis when no disability from asbestos exposure had manifested at the time of the settlement. *Chevron USA, Inc. v. WCAB (Steele)*, 19 Cal4th 1182, 64 CCC 1 (1999) (citing factual findings of depublished Court of Appeal opinion), illustrates each such disease process occurring and manifesting at different times may and should be considered a different injury for the purpose of the statute of limitations, and likely also for the purpose of any settlement with respect to any single such disease process. In this situation, defendants may perhaps protect themselves in settling such cases by including in the settlement all the potential consequences of the original employment exposure.

In a situation somewhat similar to the *Chevron, USA* case, the Board was upheld in finding that the settlement of a cumulative injury to the applicant's skin (a rash) did not bar a later cumulative injury claim from the same exposure but for a later period resulting in a systemic disease process. [*Argonaut Ins. Co. v. WCAB (Lacey)*, 54 CCC 128 (W/D-1989).]

In *Rickard v. WCAB*, 63 CCC 1089 (W/D-1997), following a stipulated award in applicant's three claims, applicant petitioned to reopen her claims. At the MSC, the parties reached a C&R of all three claims that was approved by the WCJ. Applicant thereupon again sought to reopen her claims. The WCJ initially held that the subsequent reopening was not barred by the C&R because the C&R related only to the initial reopening of applicant's claims, but the Board reversed, holding that the C&R finally settled all claims regarding applicant's injuries, including any and all claims to further benefits on reopening.