

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**IRMA DUFELMEIER, *Applicant***

**vs.**

**KAISER FOUNDATION HOSPITALS, Permissibly Self-Insured;  
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ11168130; ADJ15209288; ADJ12957225  
Van Nuys District Office**

**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, we will deny reconsideration.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**MAY 4, 2023**

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

**IRMA DUFELMEIER  
LOUIS BERMEO  
COLEMAN, CHAVEZ & ASSOCIATES**

**JMR/pc**

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

**STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board**

**CASE NUMBER: ADJ12957225**

**IRMA DUFELMEIER**

**vs.**

**KAISER PERMANENTE, PSI;**

**WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE:  
LYNN DEVINE**

**DATE: 03-17-2023**

**JUDGES REPORT AND RECOMMENDATION ON PETITION FOR  
RECONSIDERATION**

**I.  
INTRODUCTION**

- |    |   |                    |
|----|---|--------------------|
| 1. | Order Approving   | 02-15-2023         |
| 2. | Identity of Petitioner  | Defendant          |
| 3. | Verification  | Yes                |
| 4. | Timeliness  | Petition is timely |
| 5. | Petition for Reconsideration Filed  | 03-06-2023         |
| 6. | The petitioner states the undersigned erred: 1) that in the Order Approving the judge exceeded or acted in excess of her powers: Petitioner appears to argue a overarching global objection to the undersigned's declination to approve language in their settlement resolving all right of CMS against parties and placing all liability on the applicant should there be any adverse action by Medicare at a future date. |                    |

**II.  
FACTS AND ARGUMENT**

The actual language petitioner's complains of is the check box on the Order Approving that states:

"No jurisdiction, medicare language is not approved, no CMS approved MSA, CMS is not a party, no indemnification of insurance company or attorneys by applicant."

I do not believe I have either jurisdiction or obligation to provide a blanket approval and ratification to contracts between parties extraneous to the actual jurisdiction of the WCAB, especially to jurisdiction enjoyed by the Federal Government over Medicare. In fact, petitioner in the 17 page settlement states they don't believe Medicare has an interest in the settlement. Apparently their belief is insubstantial as they proceed to hedge their position.

The actual Compromise and Release is nine pages but defendant goes on another eight pages with their Medicare terms and disclaimer. This is not what the Appeals Board intended when the settlement changes were made to a single form covering the relevant issues for WCAB purposes. Pages beyond the initial nine pages simply reflect the defendant's overreaching expression of concern over the language they have used, hence they need to have the applicant agree to it and then desire to have the judge ratify it so the argument to disclaim liability would be "well, the judge approved it."

Petitioner continues "Defendant requests that the Petition for Reconsideration be granted as the WCAB acted without or in excess of its powers by seemingly imposing a requirement for Medicare language to be approved by CMS before it can be approved by the WCAB."

This is untrue and mischaracterizes the undersigned's objection. Nowhere does the Order state such, the actual order simply declines to give blanket approval to the eight pages involving Medicare.

Petitioner continues:

"...on the basis that if not challenged, the Joint Opinion and Order Approving Compromise & Release raises a significantly substantive issue that could be applied to other claims and matters – imposing a requirement for a party to submit a Workers' Compensation Medicare Set Aside Arrangement (WCMSA) to the Centers for Medicare & Medicaid Services (CMS) for review in order to obtain approval of Medicare/Medicare Set Aside language contained within a Compromise & Release."

The Petition for Reconsideration cites to future "claims and matters" and in no way compels Medicare submission which is set forth on the CMS website. It seems that petitioner wants to argue for future settlements by other parties.

Petitioner argues:

"Whether submission of a Medicare Set Aside to CMS is required in any settlement, and if so, whether CMS approval is a prerequisite for WCAB approval of Medicare language in a Compromise & Release."

This is certainly not the case as the majority of settlements do not meet the CMS threshold.

Petitioner goes on to argue that:

“Thus, to disapprove of Medicare language in the settlement documents on the basis that CMS did not approve the MSA effectively imposed a requirement that is not present in any workers’ compensation matter, and does not exist within the WCMSA Reference Guide. If applied, Medicare language to which parties amicably agree would never be accepted and/or approved by the WCAB absent CMS approval of the same. The foregoing creates inconsistent practices, settlements, and expectations – a settlement and MSA that does not meet the threshold requirements by which CMS would review a proposed MSA would never yield Medicare language approved by the WCAB, despite agreement of the parties.”

Petitioner engages in hyperbole and generalizations that do not even apply to this settlement arguing future acts of potential disapproval.

The settlement document filed in EAMS consisted of 17 pages there was no MSA attached. What was filed in file net but not attached to the settlement is a document identified as an ISO Claims Partners five pages non-submit MSA dated 08/24/2022 addressed to the claims examiner. This extraneous document was not actual part of the actual 17 pages of settlement and ISO disclaims liability.

Petitioner has no grounds to be aggrieved, the settlement has been approved in parts that are relevant to the Appeals Board’s purposes. There is no legal obligation that requires a judge to approve language outside their jurisdiction.

### **III. RECOMMENDATION ON RECONSIDERATION**

It is respectfully recommended that this Petition for Reconsideration be denied in its entirety.

DATE: 03-17-2023  
LYNN DEVINE  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE