

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Trustees of the University of	:	
Pennsylvania,	:	
Petitioner	:	
	:	
v.	:	No. 481 C.D. 2025
	:	
Natalie Braas, Corey Grink,	:	Argued: May 13, 2026
and Dean Kenniff (Workers’	:	
Compensation Appeal Board),	:	
Respondents	:	
	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION
BY JUDGE McCULLOUGH

FILED: August 20, 2026

Trustees of the University of Pennsylvania (Employer) petitions for review of the March 19, 2025 order of the Workers’ Compensation Appeal Board (Board), which vacated and remanded the June 18, 2024 decision of the Workers’ Compensation Judge (WCJ). In the June 18, 2024 decision, the WCJ granted Employer’s petition to terminate workers’ compensation benefits (Termination Petition) awarded to Natalie Braas (Claimant), denied the Petitions for Review of a Utilization Review Determination (UR Petitions) filed by Claimant and her medical providers, and dismissed Employer’s Petition Seeking Approval of a Compromise and

Release Agreement (C&R Petition) without first holding an expedited hearing on the C&R Petition.¹ The Board concluded that in so doing, the WCJ violated Section 449 of the of the Workers' Compensation Act² (Act). The Board further held that the WCJ erred by imposing non-statutory or non-regulatory conditions on the parties' ability to receive a hearing on the C&R Petition. After careful review, we affirm.

I. Factual and Procedural History

Claimant was employed by Employer as a registered nurse. On January 22, 2021, she sustained a work-related injury while moving a patient. Employer issued a medical only Notice of Compensation Payable describing the injury as an upper back strain. By a decision and order circulated on October 13, 2022, the WCJ expanded the work injury description to include cervicalgia; cervical disc protrusions at C5-6 and C6-7; electrodiagnostic pathology on the right at C6-7; cervical strain and sprain; muscle spasticity with an ongoing active trigger point; thoracic strain and sprain; and lumbosacral strain and sprain.

On February 9, 2023, Employer filed a Termination Petition, alleging that Claimant fully recovered from her work injury as of January 10, 2023. Claimant filed an Answer denying that she fully recovered.

On March 24, 2023, Corey Grink, D.C., filed a UR Petition seeking review of the reasonableness and necessity of any and all chiropractic treatment he provided to Claimant on and after November 9, 2022. On June 29, 2023, Dean C. Kenniff, D.C., filed a UR Petition seeking review of the reasonableness and necessity of any and all

¹ The Pennsylvania Association for Justice has filed a brief as Amicus Curiae in support of Claimant.

² Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§1-1041.4, 2501-2710. Section 449 was added by the Act of June 24, 1996, P.L. 350.

chiropractic treatment that he provided to Claimant on and after March 28, 2023. Thereafter, litigation of the Termination and UR Petitions commenced before a WCJ.

While these petitions were pending, the parties participated in a voluntary mediation conference on December 21, 2023. Although the mediation did not result in a settlement, the parties continued to negotiate. In compliance with the WCJ's briefing schedule, Employer filed its briefs with respect to the Termination Petition on January 16, 2024, and the UR Petitions on March 7, 2024. Claimant's and her providers' briefs were due on March 27, 2024.

Meanwhile, prior to Claimant filing her brief, the parties reached an amicable resolution in the amount of \$225,000.00, plus reimbursement of Claimant's litigation costs in the amount of \$4,912.95. On March 22, 2024, Employer filed a "Petition To/For (LIBC-378) Seek Approval of a Compromise and Release Agreement" (Petition for Approval), stating that the "parties have reached a settlement in principle with respect to the Claimant's future claim to workers' compensation benefits and seek approval of a [C&R] Agreement." (Reproduced Record (R.R.) at 33a.) The Petition for Approval was assigned to the WCJ under the same dispute number as the Termination and UR Petitions. Paragraph 19 of the C&R Agreement provided:

This Agreement is executed with the understanding that it completely resolves not only the work injury claim from 1/22/2021, but it also fully resolves any and all other work injury claims suffered while Claimant was employed with the Employer.

(c) This Agreement fully resolves all future workers' compensation claims from the circulation date of the [WCJ's] decision approving the instant Agreement onward with respect to the 1/22/2021 work injury. This Agreement does not affect the following issues currently in litigation and on which a judicial decision is requested by the parties:

i. Whether [] Claimant fully recovered under the pending Termination Petition as of 1/10/2023, per the medical opinions of Dr. Gene Salkind, based on the evidence of record.

ii. Whether the chiropractic treatment under review from Dr. Cory Grink in the pending Petition for Review of the Utilization Review Determination (LIBC-403) was reasonable and necessary, based on the evidence of record.

iii. Whether the chiropractic treatment under review from Dr. Dean Kenniff in the pending Petition for Review of the Utilization Review Determination (LIBC-403) was reasonable and necessary, based on the evidence of record.

(Board Decision, 3/19/25 at 6-7; R.R. at 123a-24a.)

On March 27, 2024, Claimant and her providers filed their briefs with respect to the Termination and UR Petitions.

On March 28, 2024, the WCJ issued an Interlocutory Order containing “Instructions to Attorneys.” The instructions state: “PLEASE READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY. IF THEY ARE NOT FOLLOWED, YOU WILL NOT RECEIVE A HEARING DATE FOR YOUR C&R AND/OR YOUR PETITION MAY BE DISMISSED.” (R.R. at 41a) (emphasis in original). The instructions further state in relevant part:

A redacted and an unredacted Compromise and Release Agreement must be uploaded as separate exhibits before the matter will be listed for a hearing. No exhibit shall be uploaded separately. All exhibits shall be uploaded with the Agreement.

It is expected that the Agreements will be uploaded within 30 days.

CHECK JUDGE INSTRUCTIONS AND JUDGE COMMUNICATIONS IN WCAIS FOR ANY JUDGE REQUIRED REVISIONS. If changes are required, they will be stated in Judge Instructions and/or Judge Communications in WCAIS. The required changes must be made and revised redacted and unredacted Agreements must be uploaded before the matter will [be] listed for a hearing.

Please ensure that Claimant has the Compromise and Release Agreement with them at the time of the hearing.

Id. (emphasis in original).

On April 26, 2024, Employer’s counsel uploaded redacted and unredacted versions of the C&R Agreement in accordance with the WCJ’s instructions.

On April 29, 2024, the WCJ notified the parties that “[t]he [C&R] Agreement must resolve all issues raised by all petitions or it will not be entertained.” (Board Decision, 3/19/25 at 7; R.R. at 124a.) The WCJ did not hold a hearing on the Petition for Approval.

Instead, on June 18, 2024, the WCJ issued a decision and order on the merits of the Termination and UR Petitions, concluding that Employer met its burden of proving that Claimant was fully recovered from her work injuries as of January 10, 2023, and that the treatments under review were not reasonable and necessary. The decision contained no findings of fact or conclusions of law mentioning the C&R Petition. The only mention was in the order, which states: “It is further ORDERED that the Petition Seeking Approval of a Compromise and Release Agreement is DISMISSED WITHOUT PREJUDICE as the issues presented [in the Termination and UR Petitions] went to decision.” (WCJ Decision, 6/18/24, at 13; R.R. at 91a) (emphasis in original). Claimant appealed to the Board.

Claimant argued that the WCJ erred in granting the Termination and UR Petitions before holding a hearing on the Petition for Approval, which was in violation of Section 449 of the Act.

Section 449 of the Act, which governs compromise and release agreements, states in relevant part as follows:

(a) Nothing in this act shall impair the right of the parties interested to compromise and release, subject to the provisions herein contained, any and all liability which is claimed to exist under this act on account of injury or death.

(b) Upon or after filing a petition, the employer or insurer may submit the proposed compromise and release by stipulation signed by both parties to the workers' compensation judge for approval. The workers' compensation judge **shall consider the petition and the proposed agreement in open hearing and shall render a decision.** The workers' compensation judge shall not approve any compromise and release agreement unless he first determines that the claimant understands the full legal significance of the agreement. The agreement must be explicit with regard to the payment, if any, of reasonable, necessary and related medical expenses. Hearings on the issue of a compromise and release shall be expedited by the department, and the decision shall be issued within thirty days.

77 P.S. §1000.5(a)-(b) (emphasis added).

The Board agreed that the WCJ violated the requirement in Section 449 that an expedited hearing must be held when a Petition for Approval is filed. (Board Decision, 3/19/25 at 11.) The Board found that because the Petition for Approval was filed under the same dispute number as the Termination and UR Petitions, “it became procedurally consolidated with the already on-going litigation.” *Id.* at 5. The Board found that the WCJ erred in not admitting the C&R Agreement into evidence and by

issuing a decision on the Termination and UR Petitions “without first addressing on the record and holding a hearing on the [Petition for Approval], which was intertwined with the pending dispute.” *Id.* at 6, 11. The Board explained that there is nothing in the Act or applicable Rule that gives a WCJ discretion to forego a hearing after a Petition for Approval is filed, unless the Petition is later voluntarily withdrawn. *Id.* at 9. It also explained that there is no authority for a WCJ to set non-statutory or non-regulatory prerequisites or conditions subjective to an individual WCJ that the parties must meet before a hearing is scheduled. *Id.* Consequently, the Board found that the WCJ was not authorized under the law to impose non-statutory or non-regulatory prerequisites or conditions on the parties’ ability to move the C&R Agreement into evidence and receive a hearing on the Petition for Approval. The Board held, in addition, that it was legally incorrect for the WCJ to insist that the C&R Agreement must resolve all issues raised by pending petitions. The Board explained that, to the contrary, a C&R Agreement can be an “all-encompassing release” so as to be a final outcome of the proceedings, or the parties, “by expressly providing that a pending petition or issue shall remain open for adjudication, may proceed with a compromise and release of future compensation.” *Id.* at 10. In order to put the parties back into the positions they were in prior to the WCJ’s June 18, 2024 decision, the Board vacated the WCJ’s entire decision³ and remanded to a new WCJ⁴ to “hold a hearing or hearings on the record in an expeditious manner and decide the [Petition for Approval] and the Termination and UR Petitions.” *Id.* at 13. Employer now appeals.

³ By vacating the decision on the Termination Petition, the Board in effect reinstated benefits back to June 18, 2024 (the date of the WCJ’s decision), with interest.

⁴ The WCJ who issued the June 18, 2024 decision retired.

II. Issues

Employer raises four issues.⁵ With respect to the Board's remand for a hearing and decision on the Petition for Approval, Employer argues that the WCJ was not required to hold a hearing before issuing a decision on the Termination and UR Petitions because the Termination and UR Petitions were not "stayed" or "held in abeyance" pending a decision on the Petition for Approval. (Employer's Br. at 19.) It further contends that the Termination and UR Petitions were not "formally consolidated with the [Petition for Approval]." *Id.* at 20. Therefore, the WCJ correctly issued her decision terminating Claimant's workers' compensation benefits and denying the UR Petitions before rendering a decision on the Petition for Approval. Finally, Employer maintains that the Board's decision is an attempt to force a decision on the C&R Agreement, "even though benefits were properly terminated and the conditions and terms of the original agreement have materially changed" with the WCJ's decision on the Termination Petition that Claimant had made a full recovery. *Id.* at 15.

The remaining three issues concern the Board's remand to a new WCJ to render a new decision on the Termination and UR Petitions. Specifically, Employer argues the Board erred by remanding the matter to a new WCJ to hold a hearing or hearings and re-decide the Termination and UR Petitions because (1) the Board cited no error and rendered no opinion on the merits of the WCJ's decision on the Termination and UR Petitions, (2) a new decision on the Termination and UR Petitions by a different WCJ would usurp the original WCJ's powers to assign credibility, weigh

⁵ This Court's review is limited to determining whether there has been a violation of constitutional rights, errors of law, or a violation of Board procedures, and whether necessary findings of fact are supported by substantial evidence. *Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe)*, 652 A.2d 797 (Pa. 1995); *Coyne Textile v. Workers' Compensation Appeal Board (Voorhis)*, 840 A.2d 372, 375 (Pa. Cmwlth. 2003).

evidence, and find facts, and (3) vacating the WCJ's decision on the Termination and UR Petitions violates Employer's constitutional rights of equal protection and due process because those petitions were already fully adjudicated and decided based on the substantial competent and credible evidence of record.

III. Discussion

We agree with the Board that the WCJ erred as a matter of law by refusing to hold an expedited hearing within 30 days, *i.e.*, by April 22, 2024, once the Petition for Approval was presented to the WCJ on March 22, 2024. The reasons offered by Employer as to why it believes the WCJ was not required to hold a hearing on the Petition for Approval are not convincing.

The law is well settled that where the language of a statute is clear, words and phrases contained therein must be construed according to their plain meaning. Section 1903(a) of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1903(a); *Kulzer Roofing, Inc. v. Department of Labor and Industry*, 450 A.2d 259 (Pa. Cmwlth. 1982). Furthermore, in applying the rules of statutory construction, the inclusion of a specific matter in a statute implies the exclusion of other matters. *Pane v. Department of Highways*, 222 A.2d 913 (Pa. 1966).

Applying the aforementioned principles, Section 449 of the Act, 77 P.S. § 1000.5, clearly requires that the WCJ **shall** consider the petition and the proposed agreement in an open hearing and **shall** render a decision. This Section further provides that the WCJ shall not approve any compromise and release agreement unless she first determines that the claimant understands the full legal significance of the agreement. Hearings on the issue of a compromise and release shall be expedited, and the decision shall be issued within 30 days. This language is mandatory; the open hearing is not

discretionary. *Blessing v. Workers' Compensation Appeal Board (Heintz Corp.)*, 737 A.2d 820, 822 (Pa. Cmwlth. 1999).

Consistent with Section 449(b) of the Act, once the parties reached an agreement to settle the matter, Employer filed a Petition for Approval. Despite the plain language of Section 449(b) explicitly stating that “nothing within the Act shall impair the ability of the parties to seek a settlement,” and instructing the WCJ to “consider the petition and the proposed agreement in open hearing” and to “render a decision,” the WCJ failed to do so, and instead instructed the parties to “resolve all issues raised by all petitions or it will not be entertained.” As the Board correctly observed, there is nothing in Section 449(b) of the Act that allows the WCJ to instruct the parties in this manner. In fact, the WCJ’s instruction in this regard was contrary to established law. It has long been held that parties to a C&R Agreement may resolve a claimant’s entitlement to future indemnity benefits and yet leave issues open for the WCJ to decide in the Agreement. *Department of Labor and Industry v. Workers' Compensation Appeal Board (Ethan-Allen Eldridge Division)*, 972 A.2d 1268, 1275-76 (Pa. Cmwlth. 2009). The C&R Agreement fully resolved “all future workers’ compensation claims from the circulation date of the [WCJ’s] decision approving the instant Agreement onward with respect to the 1/22/2021 work injury.” The parties were at liberty to leave the determination of the Termination and UR Petitions open for decision pending approval of the C&R Agreement.

Notwithstanding the unambiguous terms of Section 449, Employer insists that the WCJ was free to forego the hearing on the Petition for Approval because (a) neither party requested a “stay” of Termination and UR Petitions pending a decision on the Petition for Approval; and (b) the Termination and UR Petitions were not “formally consolidated” with the Petition for Approval. Neither of these reasons justify

dismissing the Petition for Approval without a hearing. First, Employer cites no authority which requires that the parties must request a stay or that a Petition for Approval must be consolidated with any outstanding petitions before a hearing on the Petition for Approval is held. Section 449(b) of the Act clearly does not require either procedural step. Besides, Employer filed the Petition for Approval at the same dispute number as the Termination and UR Petitions. It was clear that the parties intended to settle at least some aspects of the litigation that were still pending. By operation of law, a hearing should have immediately been scheduled to determine what those aspects were and whether Claimant understood the ramifications.

Further defending the WCJ's failure to conduct a hearing on the Petition for Approval, Employer asserts that "[l]itigation on the Termination and UR Petitions was fully litigated." (Employer's Br. at 22.) Implying that "ripe" petitions take precedence over Section 449 hearings, Employer suggests that the result here was simply a matter of unfortunate timing, asserting that "it is at the peril of the parties to work towards a resolution as quickly as possible when a decision is pending, unless the parties request a stay or abeyance of the [WCJ]'s decision." (Employer's Br. at 22.) This argument also lacks merit.

To begin, at the time the Petition for Approval was filed, litigation of the outstanding Termination and UR Petitions was not completed and ready to be decided. The Petition for Approval was filed before Claimant's final brief was due. In any event, the timing of the Petition for Approval in relation to the stage of the underlying litigation does not control whether the WCJ must hold the Section 449(b) hearing. Again, Section 449(b) of the Act requires that a WCJ hold a hearing in an expedited manner and that a decision on that petition should be made within 30 days of said hearing. The hearing is not discretionary or dependent on a party's separate request

for a stay, or whether the record has been closed. It is the filing of the petition for approval that triggers the right to a timely hearing. Section 449(b) specifically provides:

Upon or after filing a petition, the employer or insurer may submit the proposed compromise and release by stipulation signed by both parties to the workers' compensation judge for approval. **The workers' compensation judge shall consider the petition and the proposed agreement in open hearing and shall render a decision.**

77 P. S. § 1000.5(b) (emphasis added).

A WCJ may refuse to hold a hearing on a Petition for Approval if the petition is withdrawn, or where it does not comply with statutory requirements. *See, e.g., Blessing* (holding that the WCJ did not err in dismissing a petition to seek approval of a C&R agreement and refusing to accept evidence where the agreement was signed only by the claimant and not by both parties as required by Section 449); *McKenna v. Workers' Compensation Appeal Board (SSM Industries, Inc.)*, 4 A.3d 211 (Pa. Cmwlth. 2010) (a C&R Agreement, even if executed, is not a final, conclusive, and binding agreement if the employer elects to withdraw before approval). However, that was not the case here. There was no request to withdraw the Petition for Approval. There is no indication that either party wanted to back out of the settlement. The C&R Agreement was signed by both Claimant and Employer. For all intents and purposes then, a valid, pending Petition for Approval and C&R Agreement remained before the WCJ. Therefore, there was no reason to omit the hearing on the Petition for Approval by April 22, 2024, and dismiss that Petition as moot after she ruled on the merits of the Termination and UR Petitions.

Employer's argument that the Board erred by relying on the C&R Agreement because it was not admitted as part of the record is equally without merit. It is Employer's position that because the WCJ did not make the C&R Agreement part

of the record, the Board should have proceeded as though it did not exist. We do not agree that the Board was required to ignore the existence of the C&R Agreement in these circumstances, where the WCJ cites the C&R Agreement in her decision when she denied the Petition for Approval because the “issues presented” **in the C&R Agreement** “went to decision.” (WCJ Decision, 6/18/24, at 13.) The WCJ’s citation to the C&R Agreement, which clearly was in reference to Paragraph 19(c), effectively incorporated the C&R Agreement into the record and made it part of the basis for her decision subject to appellate review.

We turn next to Employer’s last argument that the Board erred by remanding the Termination and UR Petitions to the new WCJ because these Petitions were already fully adjudicated. However, based on the wording and context of the Board’s order, we are not convinced that it was the Board’s intention to have the new WCJ hold new hearings on the Termination and UR Petitions, reconsider all the evidence, issue new findings of fact, conclusions of law, and credibility determinations. The Board did not consider the substantive merits of Claimant’s arguments as to why she believed the Termination and UR Petitions were wrongly decided. So, suffice it to say, this was not the Board’s basis for remanding them. Rather, the Board directed the new WCJ to hold a hearing or hearings in an expeditious manner and “decide the [Petition for Approval] and the Termination and UR Petitions **in keeping with the request of the parties and the mandates of the Act.**” (Board Decision, 3/19/25, at 12) (emphasis added). The language “in keeping with the request of the parties” is clearly a reference to the C&R Agreement. As the Board noted, once the Petition for Approval was filed by Employer, it became “intertwined with the pending dispute,” *i.e.*, the Termination and UR Petitions. *Id.* at 11. This means that the fate of the Termination and UR Petitions, notwithstanding the underlying merits, will depend on

the outcome of the WCJ's decision on the Petition for Approval. Claimant agreed to settle all future liability after the date of the order approving the C&R Agreement and reserved for decision the UR and Termination Petitions. Employer did not reserve the right to go to the Supersedeas Fund for reimbursement in the C&R Agreement. So, the new WCJ will have to decide **what happens to** the UR and Termination Petitions in light of the parties' Agreement. For example, when considering the procedural status (e.g., are they moot? should they go to decision?) of such Petitions after the parties have entered into a C&R Agreement, it is necessary for the WCJ to determine whether the C&R Agreement specifically reserves the right of the moving party to proceed with the post-C&R litigation and that such litigation is unaffected by the C&R Agreement or whether it should be dismissed as moot. *See, e.g., Coyne Textile v. Workers' Compensation Appeal Board (Voorhis)*, 840 A.2d 372, 375 (Pa. Cmwlth. 2003) (C&R which agreed to settle all future compensation did not moot issues expressly left open for subsequent determination); *Department of Labor & Industry, Bureau of Workers' Compensation v. Workers' Compensation Appeal Board (Ethan-Allen Eldridge Division)*, 972 A.2d 1268 (Pa. Cmwlth. 2009) (lump sum payment in C&R agreement was intended to resolve future liability issues, but the parties intended to keep open issues related to the employer's suspension petition; therefore, the employer's suspension petition was not rendered moot by the C&R); *Department of Labor & Industry, Bureau of Workers' Compensation v. Workers' Compensation Appeal Board (U.S. Food Service)*, 932 A.2d 309, 315 (Pa. Cmwlth. 2007) (employer's termination petition was moot because broad language in a C&R covered all past, present, and future benefits, and the express terms of the C&R did not provide that the outstanding termination petition would remain open); *Bethlehem Structural Products v. Workers' Compensation Appeal Board (Vernon)*, 789 A.2d 767 (Pa. Cmwlth. 2001) (C&R did

not settle issue raised in employer's review petition, which questioned a WCJ's calculation of the claimant's average weekly wage, as the C&R indicated that issue was still in dispute); *Stroehmann Bakeries, Inc. v. Workers' Compensation Appeal Board (Plouse)*, 768 A.2d 1193, 1196 (Pa. Cmwlth. 2001) (termination petition was dismissed as moot because the compromise and release controlled and resolved the issue of all wage loss and benefits arising out of the original injury).

Here, the Board passed no judgment on whether the C&R Agreement resolved the Termination and UR Petitions and instead left it for the WCJ to decide in conjunction with the Petition for Approval after a hearing. We discern no error in this course of action.⁶

Accordingly, for the reasons stated above, we affirm the Board's order.

PATRICIA A. McCULLOUGH, Judge

⁶ Of course, if either party believes the WCJ needs to issue a new determination on the Termination and UR petitions, they can take it up at that time.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Natalie Braas, Corey Grink,	:	
and Dean Kenniff (Workers’	:	
Compensation Appeal Board),	:	
Respondents	:	
	:	

ORDER

AND NOW, this 20th day of August, 2026, the March 19, 2025 order of the Workers’ Compensation Appeal Board is hereby AFFIRMED.

PATRICIA A. McCULLOUGH, Judge