WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ADALBERTO URIAS, *Applicant*

vs.

PT GAMING, LIMITED LIABILITY COMPANY; MITSUI SUMITOMO INSURANCE COMPANY, administered by GALLAGHER BASSETT SERVICES, INCORPORATED, *Defendants*

Adjudication Number: ADJ10286214
Long Beach District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration filed by defendant PT Gaming, as administered by Gallagher Bassett Corona. This is our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the July 31, 2020 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a gaming table associate from September 4, 2014 to September 4, 2015, sustained injury arising out of and occurring in the course of employment and that the Compromise and Release by the parties did not abrogate applicant's right to a supplemental job displacement benefits voucher (SJDB).

Defendant contends that (1) it was impermissible for the WCJ to retroactively establish applicant's entitlement to a SJDB voucher and (2) applicant voluntarily resigned and settled with defendant via compromise and release, which includes settlement of applicant's entitlement to a SJDB voucher.

We have not received an answer from applicant.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based on the WCJ's Report, which we adopt and incorporate, and for the reasons discussed below, we affirm the July 31, 2020 Findings and Award.

Preliminarily, we address whether the Findings and Award are based on admitted evidence in the record and are supported by substantial evidence. (§§ 5903, 5952, subd. (d*)*; *Hamilton v. Lockheed Corporation* (2001) 66 Cal. Comp. Cases 473, 478 (Appeals Board en banc); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal. Comp. Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal. Comp. Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal. Comp. Cases 16].)

Labor Code[1] section 4658.7, subdivision (b), which applies to injuries occurring on or after January 1, 2013, provides that if "the injury causes permanent partial disability, the injured employer shall be entitled to a supplemental job displacement benefit as provided in this section unless the employer makes an offer of regular, modified, or alternative work . . . ." (§ 4658.7, subdiv. (b).) We note that the Findings and Award does not contain a finding regarding permanent partial disability or a finding that defendant did not offer regular, modified or alternative work, which are eligibility requirement for the SJDB voucher. We also note that there is no evidence admitted in the record from which we can base any findings.

Nevertheless, based on the unique procedural history of this matter, we conclude that defendant waived any argument that the injury in question did not cause permanent partial disability. Two issues were identified at trial, which appears to have been crafted deliberately and purposefully, as follows:

1) Applicant is entitled to a supplemental job displacement voucher unless the Compromise and Release settled it or the resignation abrogates it.

2) Applicant attorney's Petition for Costs and Sanctions are now deferred. (Minutes of Hearing/Summary of Evidence (MOHSOE) dated May 26, 2020, p. 2.)

We observe that in the February 20, 2020 Pre-Trial Conference Statement, the parties did not stipulate to an industrial injury and listed the issues that needed to be resolved as "SJDB per LC 4658 and CCR 10133, & asserts WCAB lacks jurisdiction." (Pre-Trial Conference Statement dated February 20, 2020.) However, an Amended Pre-Trial Conference Statement was filed on

[1] All statutory references are to the Labor Code unless otherwise noted.

May 26, 2020 where the parties stipulated to an industrial injury and listed the issues to be resolved as described above. (Amended Pre-Trial Conference Statement dated May 26, 2020.) The WCJ's Opinion on Decision indicated that the parties discussed the issues to be tried before proceeding on the record. (Opinion on Decision, p. 1.) Thus, we conclude that, based on this history, defendant waived any argument that the Findings and Award are not based on admitted evidence and are not supported by substantial evidence.

We agree that the parties did not settle the issue of the SJDB voucher in the compromise and release. The box for settling the SJDB voucher is not checked. Subdivision (g) of section 4658.7 provides that "[s]ettlement or commutation of a claim for the supplemental job displacement benefit shall not be permitted under Chapter 2 (commencing with Section 50002 [Compromise and Release]) or Chapter 3 (commencing with Section 5100 [lump sum payments]) of Part 3." (§ 4658.7, subdiv. (g).)[2]

With respect to defendant's contention that applicant is not entitled to a SJDB voucher because he voluntarily resigned his job, we conclude that applicant's resignation has no bearing on his entitlement to a voucher. In *Dennis v. State of California* (April 30, 2020) 85 Cal.Comp.Cases 389, 403 [2020 Cal. Wrk. Comp. LEXIS 19] (Appeals Board en banc) (*Dennis*), we held:

> . . . Our review of statutes and case law, however, leads us to conclude that an employer's inability to offer regular, modified, or alternative work does not release an employer from the statutory obligation to provide a SJDB voucher. (§ 4658.7(b).) "Labor Code section 3202 requires the courts to view the Workers' Compensation Act from the standpoint of the injured worker, with the objective of securing the maximum benefits to which he or she is entitled." (*Rubalcava v. Workers' Comp. Appeals Bd.* (1990) 220 Cal. App. 3d 901, 910 [269 Cal. Rptr. 656, 55 Cal. Comp. Cases 196].) *Thus, absent a bona fide offer*

[2] Defendant cites to *Beltran v. Structural Steel Fabricators* (2016) 81 Cal.Comp.Cases 1224 [2016 Cal. Wrk. Comp. P.D. LEXIS 366] (*Beltran*) in support of its contention that applicant settled his right to a SJDB voucher. (Petition, pp. 6:20-8:12.) In *Beltran,* a prior panel held that "where the trier of fact makes an express finding based upon the record that a serious and good faith issue exists to justify a release, a compromise and release agreement may be approved by the Board which will relieve the employer from liability for the Supplemental Job Displacement Benefit voucher." (*Id.* at p. 1230.) Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers' compensation judges (see *Gee, supra*, 96 Cal.App.4th at p. 1425, fn. 6), but the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive (see *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc).) *Beltran* allowed for the settlement of SJDB voucher in the limited circumstance where there exists facts to potentially defeat the right to workers' compensation. There are no such facts here as defendant admitted to liability. (Amended Pre-Trial Conference Statement dated May 26, 2020; Petition, p. 3:20-22 [". . . Dr. Sirajullah determined that Applicant had a 5% whole person impairment regarding his right hand . . . ."].) As such, *Beltran* does not apply here.

> *of regular, modified, or alternative work, regardless of an employer's ability to make such an offer, and regardless of an employee's ability to accept such an offer, an employee is entitled to a SJDB voucher*. (*Dennis* at pp. 405-406; emphasis added.)

Consistent with our holding in *Dennis*, we conclude here that applicant's resignation from his employment with defendant does not preclude him entitlement to a SJDB voucher.

Finally, although defendant's argument about retroactive litigation is less than clear, we note that section 4658.7 is not a new statute that is being retroactively applied to applicant. Section 4658.7 was enacted in 2012 and applies to injuries occurring on or after January 1, 2013. (§ 4658.7, subdiv. (a).) Applicant claims a cumulative trauma injury from September 4, 2014 to September 4, 2015, a period after section 4658.7 went into effect. In addition, we held in *Dennis, supra,* 85 Cal.Comp.Cases at p. 391 that pursuant to the California Constitution, the Workers' Compensation Appeals Board (WCAB) has the exclusive adjudicatory power to adjudicate compensation claims, including disputes over a SJDB voucher. As such, contrary to defendant's argument, the WCAB had the jurisdiction to resolve SJDB disputes even prior to our decision in *Dennis*. We lastly note that the "one judgment rule" (Petition, pp. 6:9-13, 8:24) does not apply to workers' compensation claims. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1073 [65 Cal.Comp.Cases 650] ["The well-known final judgment rule that governs general civil appeals was designed to prevent costly piecemeal dispositions and multiple reviews which burden the courts and impede the judicial process. (citation omitted.) This final judgment rule, however, has not held sway with respect to many decisions of the WCAB . . . ."].)

Accordingly, we affirm the July 31, 2020 Findings and Award.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 31, 2020 Findings and Award is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR IN PART AND DISSENT IN PART,

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 9, 2021

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

ADALBERTO URIAS
PERONA, LANGER, BECK, SERBIN & HARRISON
HITZKE & FERRAN, LLP

LSM/bea

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

CONCURRING AND DISSENTING OPINION
OF COMMISSIONER AND CHAIR ZALEWSKI

I concur in part and dissent in part. I concur with the majority's conclusion that applicant did not settle his Supplemental Job Displacement Benefit (SJDB) voucher because I believe the voucher cannot be settled under any circumstances due to the statutory language. I dissent to the extent the majority appears to suggest that, under different facts, the exception to the statutory prohibition to settle the voucher as held in *Beltran v. Structural Steel Fabricators* (2016) 81 Cal.Comp.Cases 1224 [2016 Cal. Wrk. Comp. P.D. LEXIS 366] (*Beltran*) is applicable. I write separately to disavow *Beltran*.

Subdivision (g) of Labor Code[3] section 4658.7 provides that "[s]ettlement or commutation of a claim for the supplemental job displacement benefit shall not be permitted under Chapter 2 (commencing with Section 50002 [Compromise and Release]) or Chapter 3 (commencing with Section 5100 [lump sum payments]) of Part 3." (§ 4658.7, subdiv. (g).)

The fundamental rule of statutory construction is to effectuate the Legislature's intent. (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [58 Cal.Comp.Cases 286, 289] (*DuBois*); *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 294 [56 Cal.Comp.Cases 476, 480]; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [38 Cal.Comp.Cases 652, 657].) The best indicator of legislative intent is the clear, unambiguous, and plain meaning of the statutory language. (*DuBois* at pp. 387-388.) When the statutory language is clear and unambiguous, there is no room for interpretation and the WCAB must enforce the statute according to its plain terms. (*Id.* at p. 387; *Atlantic Richfield Co. v. Workers' Comp. Appeals Bd.* (1982) 31 Cal.3d 715, 726 [47 Cal.Comp.Cases 500, 508].) It is only when statutory language is ambiguous and susceptible of more than one reasonable interpretation that the Appeals Board may look to other maxims of statutory construction, to legislative history, or to other evidence of the Legislature's intent. (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190; *Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535, 1543 [74 Cal.Comp.Cases 113, 117].)

Here, the language of section 4658.7, subdivision (g), is clear and unambiguous and must therefore be enforced according to its plain meaning, which is that a SJDB voucher cannot be

[3] All statutory references are to the Labor Code unless otherwise noted.

settled. As the majority points out, *Beltran* creates an exception to the statute. *Beltran* allows the settlement of a voucher when there is an express finding of a serious and good faith issue, which if resolved against applicant would defeat compensation. (*Beltran, supra,* 81 Cal.Comp.Cases at p. 1230.) The panel in *Beltran* reached this decision by analogizing the prohibition against settlement of a SJDB voucher to the prohibition against the settlement of vocational rehabilitation benefits. (*Id.* at p. 1230.) The prohibition against the settlement of vocational rehabilitation benefits state:

> Notwithstanding the provisions of Section 5100, the appeals board shall not permit the commutation or settlement of compensation indemnity payments or other benefits to which the employee is entitled under rehabilitation. (§ 5100.6.)[4]

In making this analogy, the panel looked to *Thomas v. Sports Chalet* (1977) 42 Cal.Comp.Cases 625 [1977 Cal. Wrk. Comp. LEXIS 2775] (Appeals Board en banc), which weighed the competing policy interest of prohibiting injured workers from cashing out their rehabilitation rights against their best interest with the policy in favor of settlement of cases when there is a legitimate concern about the employer's liability. (*Thomas* at pp. 627-632.) The Board in *Thomas* concluded in favor of the policy in favor of settlement of cases, and held that section 5100.6 prohibits the settlement of vocational rehabilitation benefits, except where there is a good faith issue, if resolved against applicant, would defeat the applicant's claims for all benefits. (*Id.* at pp. 626-627.) Examples of this exception to the statute are matters involving legitimate issues of injury, employment, physical aggressor, statute of limitations, and any other similar defenses. (*Ibid.*)

However, *Thomas* dealt with a different statute, one that is narrower than the one at issue here. Section 5100.6 prohibits the settlement of vocational rehabilitation benefits to which the employee is "entitled." In *Thomas*, the Board placed great emphasis on this word (*Thomas* at p. 632) and its holding makes sense in light of this modifier. Affirmative defenses questioning the viability of a workers' compensation claim also question the entitlement to rehabilitation benefits. In contrast, section 4658.7, subdivision (g), is much broader in prohibiting the settlement of a "claim" for a SJDB voucher. The settlement prohibition in section 4658.7, subdivision (g), does not require the threshold of "entitlement."

[4] Vocational rehabilitation benefits have since been replaced by Supplemental Job Displacement Benefits voucher but Lab. Code section 5100.6 has not been repealed. (*Beltran, supra,* at p. 1227.)

More importantly, the policy in favor of settlement cannot overcome the clear intent of a statute. The legislative history behind section 4658.7, subdivision (g), provides:

> According to an August 31, 2012 analysis by the Assembly Committee on Insurance, the change in the voucher program was motivated by a desire to improve the retraining of injured workers, noting that "this program has never worked well because the trigger for the benefit occurs far too late for the benefit to work well. This bill attempts to reform the SJDB to make its promise of retraining viable."
>
> The analysis by the Senate Rules Committee stated:
>
> > Return to work after an injury is crucial to an injured worker's long term financial and emotional health. California, unfortunately does a poor job of returning its injured workers to work. In 2004, SB 899 adopted a supplemental job displacement benefit designed to provide retraining services for injured workers who could not return to their existing job. However, this program has never worked well because the trigger for the benefit occurs far too late for the benefit to work well. This bill attempts to reform the SJDB to make its promise of retraining viable.
>
> Also added by SB863 was a provision prohibiting the settlement or commutation of a claim for the Supplemental Job Displacement Benefit voucher:
>
> > (g) Settlement or commutation of a claim for the supplemental job displacement benefit shall not be permitted under Chapter 2 (commencing with Section 5000) or Chapter 3 (commencing with Section 5100) of Part 3.
>
> According to the Assembly Floor Analysis, the prohibition on settlement of the Supplemental Job Displacement Benefit voucher was to prevent the "cashing out" of the retraining voucher. (*Beltran, supra,* at p. 1228.)

The Legislature codified the policy in favor of retraining injured workers and returning them to the workforce by preventing the "cashing out" of the retraining voucher. The language of the statute clearly reflects the Legislature's intent to prohibit the settlement of the voucher. There is no basis for the holding in *Beltran*. *Beltran* erroneously relied on a 1977 case about a different statute with different language. As written, there is not, nor can there be, a carve-out exception to the explicit language in section 4658.7, subdivision (g). "Settlement or commutation of a claim for the supplemental job displacement benefit shall not be permitted . . . ." (§ 4658.7, subdiv. (g).)

Accordingly, I concur with the majority's conclusion that applicant did not settle his SJDB voucher. I dissent to the extent the majority appears to suggest that, under different facts, the exception to the statutory prohibition to settle the SJDB voucher as held in *Beltran* is applicable. I write separately to disavow *Beltran*.

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/s/ KATHERINE A. ZALEWSKI, CHAIR

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