

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

ANGEL JIMENEZ, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF CALIFORNIA HIGHWAY PATROL,
legally uninsured; STATE COMPENSATION INSURANCE FUND/STATE CONTRACT
SERVICES, *Defendants***

**Adjudication Number: ADJ11168233
San Luis Obispo District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant State of California, Department of California Highway Patrol, legally uninsured, by and through its adjusting agent State Compensation Insurance Fund, seeks reconsideration of the January 8, 2024 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found that applicant is entitled to a Supplemental Job Displacement Benefit (SJDB) voucher when it failed to offer regular, modified, or alternative work following the receipt of the September 13, 2018 report of David W. Baum, M.D.

Defendant contends that applicant is not entitled to a SJDB voucher because applicant did not suffer permanent partial disability but rather suffered permanent total disability.

We received an answer from applicant Angel Jimenez. 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, the Answer, and the contents of the Report, and we have reviewed the record in this matter.¹ Based on the Report, as well as the WCJ's Opinion on Decision, both which we adopt and incorporate here, we deny reconsideration.

¹ Commissioner Palugyai, who was previously on the panel in this matter, is unavailable to participate further in this decision. Another panel member was assigned in her place.

For the foregoing reasons,

IT IS ORDERED that defendant State of California, Department of California Highway Patrol's Petition for Reconsideration of the January 8, 2024 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 26, 2024

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

**ANGEL JIMENEZ
JONES CLIFFORD, LLP
STATE COMPENSATION INSURANCE FUND**

LSM/oo

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

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE
ON PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

- | | |
|--|---|
| 1. Applicant's Occupation: | CHP Officer |
| Date of Injury: | Continuous trauma
10/26/16 - 10/26/17 |
| Parts of body alleged: | Brain and circulatory system |
| Manner in which injury occurred: | Stroke |
| 2. Identity of Petitioner: | Defendant |
| 3. Verification: | The Petition was appropriately
verified |
| 4. Timeliness: | Petition was timely filed |
| 5. Date of Issuance of Order appealed: | January 8, 2024 |
| 6. Issue presented: | (1) Did the QME report of Dr.
Baum dated of Dr. Baum dated
9/13/18 finding 97% permanent
disability trigger the requirements
under Labor Code 4658.7(b) for a
voucher. |

**II
FACTS, CONTENTIONS AND ISSUES**

Defendant, State Compensation Insurance Fund, has caused to be filed a Petition for Reconsideration seeking reconsideration of the WCJ's order that applicant is entitled to a supplemental job disability benefit voucher pursuant to Labor Code Section 4658.7(b). Defendant erroneously asserts that because applicant ultimately stipulated to a one hundred percent (100%) award more than three years after the medical reporting by the QME, finding applicant ninety-seven percent (97%) disabled, that such stipulation (later achieved) somehow negated a responsibility to pay the voucher which originated at the time of the reporting of QME Baum in September of 2018. Such a posture by the defendant is untenable and reconsideration should therefore be denied.

Labor Code Section 4658. 7 states in pertinent part:

" ... (b) If the injury caused permanent partial disability, the injured employee 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 as defined in Section 4658.1 that asserts both of the following criteria,

- (1) The offer is made no later than sixty (60) days after receipt by the claims examiner of the first report, received from either the primary treating physician, an agreed medical examiner, or a qualified medical examiner ... '
- (2) The offer is for regular work, modified work, or alternative work lasting for at least 12 months.'" (Emphasis added.)

It is inordinately clear that on September 13, 2018, the QME, Dr. Baum, issued a report, served upon defendants, describing ninety-seven percent (97 %) impairment. Defendant did not, within the sixty (60) days allotted, provide regular, modified or alternative work within the meaning of the statute. Accordingly, the duty to provide the voucher attached at that time regardless of later events.

The Statute acts as both a timekeeper and a notice provision, and the temporal. essence of the Statute is imperative and should not be corrupted by later events. Once notice is given through the QME or the treating doctor reporting to the claims administrator, duty attaches to either provide work or the voucher in sixty (60) days. In the case at bar, defendant did not provide either.

It must be noted that defendant stood upon the ninety-seven percent (97%) finding of Dr. Baum for three years and fought a stipulated award at one-hundred percent (100%). Clearly, they took the posture that. applicant was not one-hundred percent (100%) disabled. To now assert that the one-hundred percent (100%) award, later achieved through contentious litigation of defendant's denial of the one-hundred percent (100%) permanent disability, somehow negates the duty which arose sixty (60) days after September 13, 2018 is not well-reasoned. Defendant asserted a lengthy defense to the one-hundred percent (100%) award for three years and should now be estopped from asserting that the applicant was one-hundred percent (100%) disabled all along.

In summary, the defendant's duty to pay the voucher arose sixty (60) days after the reporting of Dr. Baum. Such duty was never negated by a subsequent one-hundred percent (100%) agreement to permanent disability several years later.

III RECOMMENDATION

Based upon the foregoing, it is respectfully recommended that defendant's Petition for Reconsideration be denied.

January 30, 2024

JAMES M. ZERBONI
Workers' Compensation Judge

OPINION ON DECISION

The law appears exceedingly clear that upon receipt of medical reporting by a primary treating physician or a QME stating that applicant is permanently partially disabled, a defendant must either offer a qualifying job, or issue a voucher within sixty (60) days. In the case at bar, Dr. Baum clearly found the applicant permanently partially disabled at ninety-seven percent (97%) as of September 13th, 2018. The fact that defendant ultimately stipulated to a 100 percent (100%) award years later is of no moment in this case. Defendant clearly litigated the issue for two years as to the degree of permanent disability and was well aware of Dr. Baum's finding that applicant was ninety-seven percent (97%) disabled, yet did nothing to offer a voucher. Until the stipulation at one-hundred percent (100%) issued, defendant was permanently partially disabled at an unknown value, triggering a right to a voucher 60 days after issuance of the reporting.

The fact that the defendant ultimately stipulated to one-hundred percent (100%) disability and an award commensurate with such disability is irrelevant as to the issue of whether the voucher should have issued initially in 2018. Eligibility for the voucher at that time, not utilization of the voucher, is central to the issues in this case.

Defendant's position, that this Court does not have jurisdiction to order the voucher, is untenable and inconsistent with the existing case law as well as the determination of the Administrative Director directing the applicant to seek such benefit with the WCJ and not with the Administrative Director.

This Court understands that applicant is desirous of seeking benefits in the return-to-work supplement program and that such is the purpose of obtaining the order for the voucher, as applicant cannot obtain such monetary benefit without the applicant proving eligibility for the issuance of the voucher. This Court finds that since the applicant should have been provided the voucher in September of 2018, such voucher should issue under the dictates of equity, good conscience, and fairness, as well as the existing statutory law. Failure to issue the voucher was neither reasonable nor necessary based upon the evidence in the record.

Defendant's assertion that because applicant may not ever use the voucher, it should be eviscerated is nonsensical and inconsistent with equal protection and due process under the 14th Amendment. No other benefit under the workers' compensation statutes is treated in such a fashion. For example, if a claimant suffers from industrial permanent disability and the need for future medical care, but then hits the lottery and never intends to cash his PD checks and request such

medical care, does that mean that the defendant is absolved from the responsibility for such future medical care and/or permanent disability should the applicant demand such benefit? I think not. Eligibility for the voucher under the law demands issuance regardless of whether it is going to be used. Eligibility for the supplemental job disability benefit demonstrates applicant's need for the return to work supplement and is mandatory for receipt of such benefit. Since applicant has met the statutory requirements, the voucher should issue. Any assertion reportedly set forth in the Finch case, which is not a case on all fours with this case, is distinguishable and inherently wrongheaded and should not be followed. The voucher should issue.

Date: January 9, 2024

JAMES M. ZERBONI
Workers' Compensation Judge