

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN RE:
RETURN TO WORK SUPPLEMENT PROGRAM

_____ /

REPORTER'S TRANSCRIPT OF PUBLIC HEARING

Held on Monday, December 8, 2014
Held at the Department of Industrial Relations
1515 Clay Street
7th Floor
Oakland, California 94612

Taken before AMBER EMERICK
Certified Shorthand Reporter No. 13546
State of California

1 (Monday, December 8, 2014, 9:47 a.m.)

2
3 P R O C E E D I N G S
4

5 MS. GORMLEY: Good morning. Thank you for
6 coming today. I am Tess Gormley, the Special Advisor to
7 the Director of the Department of Industrial Relations.

8 This is the public hearing for the
9 Return-to-Work Supplement Program. Please make sure you
10 sign in on the sign-in sheet and indicate if you want to
11 testify today.

12 I would like to introduce the honorary DIR staff
13 that are present here today:

14 Fred Lonsdale, the attorney for the Office of
15 Director.

16 Nathan Smith, attorney, also from the Office of
17 the Director, DIR.

18 And our court reporter today is Amber Emerick.

19 When you come up to testify -- well, I think I
20 already gave the business card to Amber, but please
21 identify yourself. All testimony given today will be
22 taken down by Amber, our court reporter.

23 If you have any written comment -- any written
24 testimony you want to hand in, please, you can give it to
25 me. I will call the names for those who have checked that

1 they want to testify. I will also check to see if anyone
2 who -- has decided to make a comment.

3 This hearing will continue as long as there are
4 people who wish to comment on the regulations, but will
5 close at 3:00 p.m. today. If the hearing continues into
6 the lunch hour, we will take at least an hour's break for
7 lunch around noon.

8 Written comments can be given to me, if you have
9 them, or will be accepted by fax, by e-mail, or our RTWSP
10 offices on the 17th floor of this building until 5:00 p.m.
11 tomorrow.

12 The purpose of this hearing is to receive
13 comments of the proposed Return-to-Work Supplement Program
14 regulations, and we welcome any comments you have about
15 them. All your comments, both given here today and those
16 submitted in writing, will be considered by the Director
17 in determining what revisions we may make to the
18 regulations.

19 Please restrict the subject of your comments to
20 the regulations, and to any suggestions you have for
21 changing the proposed regulations. If, also, you could
22 limit your comments to about ten minutes in length.

23 We will not enter into any discussions this
24 morning, although we may ask for clarification or ask you
25 to elaborate further on any points you are presenting.

1 Again, reminder: Please make sure you have
2 signed in and checked the box to indicate whether you want
3 to speak or not. When you come up to give your testimony,
4 please identify yourself. And, please, you know, come up
5 to the podium and speak into the mic and identify yourself
6 before speaking.

7 So we will let -- the first speaker, please come
8 to the mic and introduce yourself. Who wants to come in
9 first? I think Bert or Diane.

10 MS. WORLEY: Good morning. I'm Diane Worley,
11 and I'm the Director of Policy Implementation from the
12 California Applicants' Attorneys Association. And I was
13 expecting a huge crowd here after attending the State
14 Correlors Meeting earlier this year. So I'm glad to see a
15 few of you out there.

16 Initially, I just want to say that we strongly
17 support the general framework of these draft regulations.
18 CAAA believes these draft regulations properly implement
19 the intent of the legislature enacting Labor Code Section
20 139.48.

21 Specifically, it establishes a simple and
22 expeditious process to provide supplemental payments to
23 injured workers with disproportionately low permanent
24 disability benefits.

25 The eligibility determination and regulations we

1 also support.

2 The February 2014 RAND study had two key
3 findings: All workers who have a permanent disability
4 resulting from their work injury experience had
5 significant earning losses. And earning losses are
6 especially severe for those workers who do not return to
7 their old job after their injury.

8 We submitted written comments this morning by
9 e-mail, setting forth a few suggested recommendations to
10 make the ability to apply to the Return-to-Work Fund
11 equally accessible for all injured workers.

12 And I attended today with my colleague, Bert
13 Arnold, who is President-Elect of the California
14 Applicants' Attorneys Association. So I am going to let
15 him cover some of the specific recommendations that we
16 have for changes to the current draft.

17 Thank you.

18 BERT ARNOLD: Good morning. My name is Bert
19 Arnold. I am -- as Diane said -- President-Elect of the
20 California Applicants' Attorneys Association. And I
21 really would like to acknowledge the government and the
22 work that they've done putting together these regs in a
23 way that we at CAAA really support. This has been done in
24 a manner -- well, the regs suggest a manner that the funds
25 will be available expeditiously, and that we will use the

1 \$120 million every year to the benefit of injured workers.

2 There are some things that we have in our
3 comments to the regs for the public hearing purposes, and
4 I would just like to point some of those things out.

5 The first thing I wanted to address is that the
6 Notice to Injured Workers is on the sixth page of the
7 Voucher notice. And while people such as myself and
8 defense attorneys, claims examiners -- whatever -- we do
9 this every day, and it's second nature to us. But for an
10 injured worker, this should only happen to them one time
11 in their life. And so to bury a notice like that on the
12 sixth page, I have -- we have legitimate concerns that a
13 lot of folks will be entitled to this benefit and never
14 even find out because they may not be astute enough to
15 realize it.

16 So what we're suggesting is that the Notice be
17 obvious, and that it be on Page 1, or that it be addressed
18 in a cover letter with the Notice.

19 Like I say, this is just confusing enough for
20 somebody who has never been within the system, and we
21 would like to see it as easy as possible to get through
22 it.

23 The second thing, and -- again, this is in our
24 comments -- but access to the funds. It's set out where
25 it has to be done by computer, or someone can come down to

1 the Board, where there's going to be kiosks. And that's
2 going to be really difficult for people who don't have a
3 computer, who live in outlying areas, where they just
4 can't get down to the Board. And it doesn't seem like it
5 would be that difficult to allow access to this program by
6 simply having mail as an alternative.

7 We've been using mail for a long time. And,
8 yes, we would like to get into the 21st Century and do it
9 as much as possible by computers. It's easy. I
10 understand that. But there are circumstances where
11 somebody just can't do that. And to allow them the
12 opportunity to do it by mail, I feel would be a little bit
13 more fair.

14 The third thing I wanted to address -- just the
15 language. I mean, there are requirements within various
16 parts of the Labor Code, et cetera, that these notices
17 need to be in Spanish. And there's nothing in these regs
18 that provide that the notices should be in Spanish. So
19 that ought to be considered.

20 And then, finally, here we are to almost 2015,
21 and there's been no money spent so far, which would
22 suggest that, as I stand here right now, there is \$240
23 million sitting in this fund, and there will be another
24 \$120 million added right after the first of the year.

25 So there needs to be a provision to account for

1 this extra 240 million -- well, not extra, but \$240
2 million that is within the general fund of this right now.

3 And how are we going to distribute that long
4 term, according to the way it's set up? Now, there's -- I
5 believe it's \$5,000 that's going to be payable to somebody
6 that applies. But it sounds like there's going to be more
7 money available. That's something that needs to be
8 considered.

9 I don't know if you want to take the extra \$240
10 million -- as of January 1st, that will be the amount --
11 and just amortize that over the next ten years. That
12 money is going to be available, and it's supposed to be
13 spent every year. So something needs to be done to figure
14 that out.

15 Thank you.

16 MS. GORMLEY: Is there anybody else who would
17 like to testify today?

18 MS. FREEMAN: You know what? Actually, I will.

19 My name is Debbie Freeman. And I work with
20 carriers and employers, trying to get injured workers back
21 to work. That's actually my job. And I agree with the
22 gentleman that just spoke.

23 My major concern is, right now our injured
24 workers from 1/1/13, and continuing, very few injured
25 workers are even entitled to the Voucher, simply because

1 of the doctors not filling out the form that triggers the
2 process.

3 So first of all, I think we need to educate the
4 doctors that fill out the form so the injured workers even
5 get the Voucher to begin with.

6 And he is right. If you look at the facts about
7 injured workers, and if you look at the SJDB FAQs, and all
8 the FAQs online, there is nothing about the Return-to-Work
9 Fund at all on anything.

10 So I think the best way to communicate to
11 injured workers, about the Voucher that could be entitled
12 to them, but also the Return-to-Work Fund, is to revise
13 all the facts, revise all the SJDB facts online. And
14 that's probably the best way to me, if your worker -- to
15 educate the injured worker about the benefit that they're
16 possibly entitled to.

17 MS. GORMLEY: Anybody else?

18 MR. LONSDALE: We can just wait and see if
19 people show up.

20 (Brief recess taken.)

21 MS. GORMLEY: I just want to say that we break
22 for lunch at 11:00 and be back at 1:00.

23 (Brief recess taken.)

24 MR. WICK: Can I go ahead and say something?

25 Well, I figured I have to have something; right?

1 My name is Bruce Wick. I am with the California
2 Professional Association of Specialty Contractors, and I
3 just want to say one -- hopefully concise -- thing.

4 Employers pay a lot of money for workers' comp.
5 And when you look at how much they pay and how little is
6 left at the end for workers and direct medical providers,
7 it's pretty sad.

8 So I appreciate this fund, and I appreciate this
9 alternative versus the others that were outlined; that
10 this -- employers pay a lot of money directly into a fund,
11 and that money goes directly to workers. And there is no
12 administrative or any other money taken away from it.

13 That's why I do support this version versus the
14 alternates that were talked about because we're --
15 employers are paying money directly to their workers who
16 have suffered an injury and not been able to go back to
17 work.

18 So I support -- as it stands -- the way it's set
19 up.

20 Thank you.

21 MS. GORMLEY: Thank you.

22 (Recess taken.)

23 MS. GORMLEY: Okay. It's 11 o'clock. We're
24 breaking for lunch. So be back at 1:00. Thank you.

25 (Lunch recess taken.)

1 MS. GORMLEY: It's 1 o'clock. And we're ready
2 to begin with the afternoon session of the public hearing
3 for the Return to Work, if anybody wants to testify.

4 (Recess taken.)

5 MS. GORMLEY: It's 3 o'clock, and no one else
6 will give testimony.

7 So we are closing the public hearing for the
8 Return-to-Work Supplement Program.

9
10 (Whereupon, the public hearing
11 was closed at 3:00 p.m.)

12
13
14
15 ---o0o---

CERTIFICATE OF REPORTER

I, AMBER EMERICK, hereby certify that the foregoing proceeding was taken in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said proceedings which took place;

That I am a disinterested person to the said action.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of December, 2014.

AMBER EMERICK CSR No. 1354