

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **ANTHONY DENNIS,**

5 *Applicant,*

6 **vs.**

7 **STATE OF CALIFORNIA – DEPARTMENT**
8 **OF CORRECTIONS AND**
9 **REHABILITATION INMATE CLAIMS;**
10 **STATE COMPENSATION INSURANCE**
11 **FUND,**

12 *Defendants.*

Case No. **ADJ9346293**
(Sacramento District Office)

OPINION AND DECISION
AFTER RECONSIDERATION
(En Banc)

13 We granted reconsideration on October 26, 2018 and on January 13, 2020, we issued a notice of
14 intention (NIT) to affirm our July 31, 2018 decision and to allow the Administrative Director an
15 opportunity to provide briefing on the issue of the validity and authority of Administrative Director (AD)
16 Rule 10133.54¹ (Cal. Code Regs., tit. 8, § 10133.54) in light of the exclusive jurisdiction of the Workers'
17 Compensation Appeals Board (WCAB)² to adjudicate compensation claims under Labor Code³ section
18 5300. Having considered the Administrative Director's response, we now issue our Opinion And
19 Decision After Reconsideration (En Banc).⁴

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24 ¹ AD Rule 10133.54 provides that parties may seek dispute resolution regarding the supplemental job displacement benefits (SJDB) program from the Administrative Director. AD Rule 10133.54 is quoted in its entirety on pp. 11-12.

25 ² For the purposes of this Opinion, reference to the Appeals Board is only to the Office of the Commissioners and reference to the WCAB includes the trial courts and the Appeals Board.

26 ³ All subsequent statutory references are to the Labor Code.

27 ⁴ Commissioner Juan Pedro Gaffney is unavailable and is not participating in this en banc decision.

1 To secure uniformity of decision in the future, the Chair of the Appeals Board, upon a unanimous
2 vote of its members, assigned this case to the Appeals Board as a whole for an en banc decision.⁵

3 Based upon our review of the record, SCIF's Petition, applicant's Answer, the Administrative
4 Director's response, and the relevant statutes, rules, and case law, we hold that:

5 (1) AD Rule 10133.54 is invalid because it exceeds the statutory authority
6 granted to the Administrative Director under sections 4658.5, subdivision
7 (c), and 4658.7, subdivision (h)⁶, and restricts the exclusive adjudicatory
power of the WCAB to adjudicate compensation claims, including disputes
over supplemental job displacement benefits; and

8 (2) an employer must show that it made a bona fide offer of regular,
9 modified, or alternative work in order to avoid liability for a supplemental
job displacement benefit voucher.

10 As our decision after reconsideration (en banc), we affirm our July 31, 2018 decision.

11 **I. FACTUAL AND PROCEDURAL BACKGROUND**

12 Applicant sustained industrial injury on October 29, 2013 to his right wrist while working as an
13 inmate laborer for the California Department of Corrections and Rehabilitation. The parties resolved
14 applicant's workers' compensation claim via Stipulations with Request for Award and an Award was
15 issued on September 11, 2017. This settlement did not include applicant's claim for a SJDB voucher.⁷
16 (Stipulations with Request for Award dated September 7, 2017, p. 7.)

17 Prior to the settlement, on May 15, 2017, defendant sent applicant a Notice of Offer of Regular,
18 Modified, or Alternative Work. (Joint Exhibit 1, Notice of Offer of Regular, Modified, or Alternative
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20 ⁵ En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and workers' compensation
21 administrative law judges. (Cal. Code Regs., tit. 8, former § 10341, now § 10325 [eff. Jan. 1, 2020]; *City of Long Beach v.*
22 *Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers'*
Comp. Appeals Bd. (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].) This en banc decision is also adopted
as a precedent pursuant to Government Code section 11425.60(b).

23 ⁶ All subsequent references to a subdivision are noted by a parenthesis. Section 4658.5(c) provides in relevant part that the
24 Administrative Director shall adopt regulations governing the form of payment and reimbursement of the program and "other
25 matters necessary to the proper *administration* of the supplemental job displacement benefit" program. (§ 4658.5(c),
emphasis added.) Section 4658.7(h) states that the Administrative Director shall adopt regulations for the *administration* of
26 the supplemental job displacement benefits program, including, but not limited to, notices and forms to be issued under this
program. (§ 4658.7(h).) Sections 4658.5(c) and 4658.7(h) are quoted on p. 10.

27 ⁷ A SJDB voucher pays for a range of education-related retraining, skill enhancement, and/or vocational expenses at the
injured worker's option to equip them to re-enter the workforce. (§ 4658.7(e).)

1 Work.) The letter accompanying the Notice states, “We are advising you that your employer has either
2 your regular work or a modified or an alternative job available for you.” (*Id.* at p. 2.) The Notice,
3 however, also states, “SUBJECT TO APPLICANT VERIFYING THEY ARE LAWFULLY
4 QUALIFIED TO ACCEPT EMPLOYMENT AS AN INMATE LABORER, YOU HAVE
5 VOLUNTARILY TERMINATED YOUR EMPLOYMENT DUE TO YOUR RELEASE FROM
6 PRISON AND ARE NO LONGER AVAILABLE FOR EMPLOYMENT [*sic*].” (*Id.* at p. 4,
7 capitalization in original.)

8 On September 19, 2017, applicant filed a Request for Dispute Resolution Before Administrative
9 Director, requesting that the Administrative Director resolve the issue of applicant’s entitlement to a
10 SJDB voucher and the issue of applicant’s objection to defendant’s offer of regular, modified, or
11 alternative work. (Joint Exhibit 2, Request for Dispute Resolution.) The Administrative Director did not
12 issue a determination, and pursuant to AD Rule 10133.54(f),⁸ the request was therefore deemed denied
13 on December 8, 2017. The Administrative Director, however, contends that applicant’s Request for
14 Dispute Resolution Before Administrative Director was not properly filed and that therefore the denial by
15 operation of law under AD Rule 10133.54(f) never came into effect. (AD’s Response, p. 9:12-11:21.)

16 On February 6, 2018, applicant filed a Declaration of Readiness to Proceed with an
17 accompanying petition at the Sacramento District Office requesting resolution of his entitlement to a
18 SJDB voucher. (Declaration of Readiness to Proceed; Petition for Grant of Supplemental Job
19 Displacement Benefit.)

20 The parties proceeded to trial on March 27, 2018 on the issues of whether applicant’s appeal of
21 the presumed denial by the Administrative Director of the request for dispute resolution was timely and
22 whether applicant is entitled to a SJDB voucher. (Minutes of Hearing/Summary of Evidence
23 (MOH/SOE), p. 2:7-8.)

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26 ⁸ AD Rule 10133.54(f) sets forth the time limits for the Administrative Director to issue a decision; if no decision timely
27 issues, the request is deemed denied. (Cal. Code Regs., tit. 8, § 10133.54(f).)

1 On May 9, 2018, the WCJ issued a Findings and Award finding that applicant's appeal of the
2 Administrative Director's decision was untimely, and that applicant was not entitled to a SJDB voucher.

3 Applicant filed a Petition for Reconsideration on May 15, 2018, contending that he is entitled to a
4 SJDB voucher. We granted reconsideration on July 16, 2018 to allow sufficient opportunity to further
5 study the factual and legal issues raised in the Petition.

6 In our July 31, 2018 Opinion, we rescinded the May 9, 2018 Findings and Award, and substituted
7 a new Finding that applicant is entitled to a SJDB voucher. In our Opinion, we concluded that the
8 WCAB maintains exclusive jurisdiction to adjudicate SJDB disputes irrespective of AD Rule 10133.54,
9 which provides that the parties may request a dispute resolution with the Administrative Director before
10 appealing the Administrative Director's decision to the WCAB. Accordingly, we found in our July 31,
11 2018 Opinion that applicant is entitled to a SJDB voucher even though he did not file an appeal of the
12 Administrative Director's presumed denial within the 20-day time period set forth in AD Rule
13 10133.54(g).

14 Defendant, newly aggrieved, now seeks reconsideration of our July 31, 2018 decision, which we
15 granted on October 26, 2018.

16 Defendant contends that: (1) the Administrative Director has the authority to set the timeline for
17 filing an appeal; (2) AD Rule 10133.54 does not abrogate the WCAB's ability to adjudicate SJDB
18 voucher claims; (3) if there is a statutory conflict, the specific statute granting the Administrative
19 Director power to administer the SJDB program is paramount to the general statute granting the WCAB
20 adjudicatory power over compensation disputes; (4) it complied with its obligation under the plain
21 meaning of the Labor Code; (5) an employer is not required to make a showing of a bona fide offer when
22 issuing a return to work offer; (6) requiring defendant to provide a SJDB voucher in this instance is a
23 violation of the equal protection clause; (7) it was not the intent of the Legislature to afford inmate
24 employees greater access to SJDB vouchers than non-inmate employees; (8) the Appeals Board's
25 decision could invalidate all prior decisions of the Administrative Director regarding SJDB vouchers
26 resulting in a greater number of cases to be adjudicated by the WCAB; and (9) the Appeals Board should
27 invite the Administrative Director to file a brief before making a final decision in this case.

1 We received an Answer from applicant. Applicant contends that: (1) defendant owes applicant a
2 SJDB voucher because it did not provide him with a bona fide offer of regular or modified work within
3 60 days of Agreed Medical Evaluator (AME) Thomas S. Pattison, M.D.,’s report finding that applicant
4 had reached maximum medical improvement; (2) defendant is not disproportionately burdened by
5 providing a SJDB voucher to applicant because the Labor Code otherwise disproportionately benefits
6 defendant by reducing benefits to inmate laborers; and (3) denying applicant a SJDB voucher on the
7 ground of timeliness is inappropriate because AD Rule 10133.54(g), which governs appeals of the
8 Administrative Director’s decision, is permissive, not mandatory.

9 We granted reconsideration on October 26, 2018 and on January 13, 2020, we issued an en banc
10 NIT to affirm our July 31, 2018 decision and to allow the Administrative Director an opportunity to
11 provide briefing on the issue of the validity and authority of AD Rule 10133.54.

12 We received a response from the Administrative Director. The Administrative Director contends
13 that: (1) it has the adjudicatory authority to resolve disputes over the SJDB and that its dispute resolution
14 process is valid; (2) its dispute resolution process is voluntary and does not usurp the jurisdiction of the
15 WCAB; and (3) the WCAB cannot invalidate AD Rule 10133.54 because the issue is not ripe since
16 applicant did not properly file his Request for Dispute Resolution Before Administrative Director. After
17 considering the Administrative Director’s response and as discussed below, nothing in the Administrative
18 Director’s Response changes our views as expressed in the NIT and we now issue our Opinion And
19 Decision After Reconsideration (En Banc).

20 II. DISCUSSION

- 21 **A. AD Rule 10133.54 is invalid because it exceeds the statutory authority granted to the**
22 **Administrative Director under sections 4658.5(c) and 4658.7(h) and restricts the**
23 **exclusive adjudicatory power of the WCAB to adjudicate compensation claims,**
24 **including disputes over supplemental job displacement benefits.**

25 In determining the validity and authority of AD Rule 10133.54, we first review the authority
26 vested in the WCAB.
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1 **1. The WCAB has exclusive jurisdiction pursuant to the California Constitution and**
2 **section 5300 to adjudicate workers' compensation disputes.**

3 Article XIV, Section 4, of the California Constitution, provides in pertinent part that:

4 The Legislature is hereby expressly vested with plenary power, unlimited
5 by any provision of this Constitution, to create, and enforce a complete
6 system of workers' compensation, by appropriate legislation, and in that
7 behalf to create and enforce a liability on the part of any or all persons to
 compensate any or all of their workers for injury or disability, and their
 dependents for death incurred or sustained by the said workers in the
 course of their employment, irrespective of the fault of any party. . .

8 * * *

9 The Legislature is vested with plenary powers, to provide for the settlement
10 of any disputes arising under such legislation by arbitration, or by an
11 industrial accident commission, by the courts, or by either, any, or all of
12 these agencies, either separately or in combination, and may fix and control
13 the method and manner of trial of any such dispute, the rules of evidence
 and the manner of review of decisions rendered by the tribunal or tribunals
 designated by it; provided, that all decisions of any such tribunal shall be
 subject to review by the appellate courts of this State. . . .

14 * * *

15 Nothing contained herein shall be taken or construed to impair or render
16 ineffectual in any measure the creation and existence of the industrial
17 accident commission of this State or the state compensation insurance fund,
18 the creation and existence of which, with all the functions vested in them,
19 are hereby ratified and confirmed.

20 (Cal. Const. Art. XIV, § 4.)

21 Under this constitutional grant of plenary power to the Legislature, the California Workers'
22 Compensation Act (§ 3200 et seq.) was enacted "to establish a complete and exclusive system of
23 workers' compensation including 'full provision for vesting power, authority and jurisdiction in an
24 administrative body with all the requisite governmental functions to determine any dispute or matter
25 arising under such legislation, to the end that the administration of such legislation shall accomplish
26 substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character;
27 all of which matters are expressly declared to be the social public policy of this State" (*Crawford*
v. Workers' Comp. Appeals Bd. (1989) 213 Cal.App.3d 156, 163 [54 Cal.Comp.Cases 198] citing Cal.
Const., art. XIV, § 4; § 3201; *Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1002

1 [51 Cal.Comp.Cases 408].) Thus, under the grant of authority in the California Constitution, the Appeals
2 Board operates as an appellate court of limited jurisdiction that reviews and decides appeals from
3 decisions issued by workers' compensation administrative law judges. (Cal. Const., art. XIV, § 4;
4 §§ 111-116, 133-134, 3201, 5300-5302, 5900 et seq.; *Bankers Indemnity Ins. Co. v. Industrial Acc. Com.*
5 (1935) 4 Cal.2d 89; *Fremont Indemnity v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965 [49
6 Cal.Comp.Cases 288]; *Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 376 [57
7 Cal.Comp.Cases 391] ["[t]he WCAB . . . is a constitutional court"].⁹

8 The Workers' Compensation Act is found in Divisions 4 and 4.5 of the Labor Code, as
9 administered and enforced by the Division of Workers' Compensation under the control of the
10 Administrative Director, "except as to those duties, powers, jurisdiction, responsibilities, and purposes as
11 are *specifically vested* in" the Appeals Board. (§ 111, emphasis added.) The Administrative Director
12 "exercise[s] the powers of the head of a department... [including] supervision of, and responsibility for,
13 personnel, and the coordination of the work of the division. . . ." (§ 111; see §§ 123, 127, 133
14 [describing various powers of the Administrative Director].) The Appeals Board exercises *all judicial*
15 *powers* vested in it by the Labor Code and may do all things necessary or convenient in the exercise of
16 any power or jurisdiction conferred upon it by the Labor Code. (§§ 111, 133; see §§ 115, 130, 134,
17 5307, 5309, 5813, 5900 et. seq.) [describing various powers of the Appeals Board].) In addition to
18 review of appeals of decisions issued by workers' compensation administrative law judges by way of
19 petitions for reconsideration and/or removal (§ 5900 et. seq.), the major function of the Appeals Board is
20 regulation of the adjudication process by adopting rules of practice and procedure and issuing en banc
21 opinions (§ 5307; § 115).¹⁰

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23 ⁹ The Office of the Attorney General recognizes that the WCAB "is the adjudicatory body of the workers' compensation
24 system which imposes on employers as defined therein, without regard to their negligence or the lack of negligence of their
employees, a liability to compensate workers for work-related injuries." (61 Ops.Cal.Atty.Gen. 46 (1978) citing *Western*
Indemnity Co. v. Pillsbury (1915) 170 Cal. 686.)

25 ¹⁰ The Appeals Board has delegated to the workers' compensation administrative law judges at the trial level all necessary
26 judicial power and duties to hear and make decisions for the Appeals Board in initial trials and proceedings. (§§ 5309, 5310,
27 5313.) After the Appeals Board issues a final decision following a petition for reconsideration, an aggrieved party may file a
petition for writ of review in the appropriate California District Court of Appeal. (§ 5950.) The appellate court may not hold
a trial de novo, or take evidence, or exercise its independent judgment on the evidence. (§ 5952.) It is limited to determining
the lawfulness of the Appeals Board's decision. (§ 5951.)

1 Pursuant to section 5300, the WCAB has exclusive jurisdiction to adjudicate the “recovery of
2 compensation, or concerning any right or liability arising out of or incidental thereto” of injuries that
3 “arise out of and in the course” of employment. (§§ 3600(a), 5300(a); see *Santiago v. Employee Benefits*
4 *Servs.* (1985) 168 Cal.App.3d 898, 901-902.) Compensation includes medical treatment, temporary
5 disability indemnity, permanent disability indemnity, SJDB vouchers, and death benefits. (§ 3207
6 [compensation includes every benefit or payment to which an injured worker or their dependents is
7 statutorily entitled]; see § 3550(d)(5); *Fuentes v. The Cheesecake Factory et al.* (June 9, 2016,
8 ADJ9441873) [2016 Cal. Wrk. Comp. P.D. LEXIS 286, *6] [“The Supplemental Job Displacement
9 Benefit qualifies as ‘compensation’”]; *Portugal v. Mikasa et al.* (February 10, 2009, ADJ4312477,
10 ADJ2550699, ADJ1243304, ADJ541032, ADJ595387, ADJ1104781) [2009 Cal. Wrk. Comp. P.D.
11 LEXIS 143, *3] [“the WCJ explained that the definition of ‘compensation’ under section 3207 is broad
12 enough to include the rehabilitation voucher even though it is not paid to the injured worker.”])¹¹ In
13 other words, the WCAB maintains exclusive jurisdiction pursuant to the California Constitution and
14 section 5300 to adjudicate workers’ compensation disputes.¹²

15 **2. The exclusive adjudicatory power of the WCAB includes determination of the**
16 **validity of AD regulations.**

17 As explained in our opinion in *Mendoza v. Huntington Hosp. et al.* (2010) 75 Cal.Comp.Cases
18 634 (Appeals Board en banc) (writ den.), “[t]he WCAB has exclusive original jurisdiction to determine
19 the validity of regulations adopted by the A[dm]inistrative D[ir]ector. [Citations.]” (*Id.* at p. 640; writ of
20 _____

21 ¹¹ Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers’
22 compensation judges. (See *Gee, supra*, 96 Cal.App.4th at p. 1425, fn. 6.) A California Compensation Cases digest of a “writ
23 denied” case is also not binding precedent. (*MacDonald v. Western Asbestos Co.* (1982) 47 Cal.Comp.Cases 365, 366
24 (Appeals Board en banc).) While not binding, 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).)

25 ¹² As discussed in *Stevens v. Workers’ Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1074, 1091 [80 Cal.Comp.Cases 1262], the
26 Legislature created statutory exceptions to the WCAB’s exclusive adjudicatory jurisdiction in sections 4610 (utilization
27 review) and 4610.6 (independent medical review). (§§ 4610 and 4610.6.) Sections 3715(c) (workers’ compensation
insurance) and 4603.6(f) (medical bills) are additional statutory exceptions to the WCAB’s exclusive adjudicatory jurisdiction.
(§§ 3715(c) and 4603.6(f).)

1 review denied September 16, 2010 sub nom. *Mendoza v. Workers' Comp. Appeals Bd. (Huntington*
2 *Hosp.)* (2010) 75 Cal.Comp.Cases 1204 [2010 Cal. Wrk. Comp. LEXIS 196]; review denied
3 December 1, 2010 (S186764) 2010 Cal. LEXIS 12091; see *Navarro v. City of Montebello* (2014) 79
4 Cal.Comp.Cases 418, 426 (Appeals Board en banc) and *Scudder v. Verizon California, Inc.* (March 10,
5 2011, ADJ916063) [2011 Cal. Wrk. Comp. P.D. LEXIS 138, *7.] In making this determination, a court
6 must consider the following: (1) whether the regulation is consistent and not in conflict with the statute,
7 and (2) whether the regulation is within the scope of the authority conferred. (*Mendoza*, at p. 640.) A
8 regulation that is inconsistent with the statute is invalid. (*Ibid.*) Likewise, a regulation that exceeds the
9 scope of the enabling statute is invalid. (*Id.* at p. 641.) “Accordingly, ‘any . . . regulation promulgated
10 by the [Administrative] Director of the Division of Workers’ Compensation in contradiction to the
11 Workers’ Compensation Act is invalid. . . . [A]dministrative regulations may not contravene [the] terms
12 of statutes under which they are adopted. [Citations.]’” (*Ibid.*) Courts “not only may, but it is their
13 obligation to strike down such regulations. [Citations.]” (*Ibid.*)

14 We do not dispute that an “administrative regulation is presumptively valid” and that “if there is a
15 reasonable basis for it, a reviewing court [shall] not substitute its judgment for that of the administrative
16 body.” (*Tomlinson v. Qualcomm, Inc.* (2002) 97 Cal.App.4th 934, 940; *Boughner v. Comp USA, Inc.*
17 (2008) 73 Cal.Comp.Cases 854, 860 (Appeals Board en banc); see AD’s Response, p. 3:12-16.) But this
18 presumptive validity is rebuttable and the law sets forth clear standards as discussed above for rebutting
19 it. (*Boughner, supra.*)

20 In sum, the Appeals Board is vested with exclusive original jurisdiction to determine the validity
21 of regulations adopted by the Administrative Director pursuant to statutory and long-standing case
22 authority. Specifically, as relevant here, the Appeals Board is vested with exclusive original jurisdiction
23 to determine the validity of AD Rule 10133.54.

24 **3. AD Rule 10133.54 exceeds the authority granted in sections 4658.5(c) and 4658.7(h),**
25 **which authorizes the Administrative Director to adopt regulations for the**
administration of the supplemental job displacement benefits program.

26 In 2003, the Legislature enacted section 4658.5, which enabled the Administrative Director to
27 adopt AD Rule 10133.54 in 2005. (§ 4658.5(c).) In 2012, the Legislature added section 4658.7, which

1 modified the enabling language found in section 4658.5(c). (§ 4658.7(h).) Section 4658.5 applies to
2 injuries occurring on or after January 1, 2004, and before January 1, 2013. (§ 4658.5(a).) Section 4658.7
3 applies to injuries occurring on or after January 1, 2013. (§ 4658.7(a).) Although the Legislature enacted
4 a new enabling statute for injuries occurring on or after January 1, 2013, the language in AD Rule
5 10133.54 has remained largely unchanged throughout the years (except for one amendment in 2008,
6 which made minor procedural changes). Section 4658.7 is the applicable statute here as the injury
7 occurred on October 29, 2013. Nevertheless, for the sake of completeness, we discuss both enabling
8 statutes.

9 Both sections 4658.5 and 4658.7 provide that an injured employee who sustains permanent partial
10 disability is entitled to a SJDB voucher. (§§ 4658.5 and 4658.7.) Both statutes provide an exemption to
11 a SJDB voucher when the employer makes an offer of regular, modified, or alternative work that meets
12 certain specified criteria. (§§ 4658.6 and 4658.7(b).) Depending on the year of the injury and, in some
13 instances, on the level of the permanent disability award, a SJDB voucher is redeemable up to \$10,000,
14 to pay for a range of retraining or vocational expenses at the injured employee's option. (§§ 4658.5 and
15 4658.7.)

16 The relevant portion of section 4658.5(c) provides:

17 (c) . . . The administrative director shall adopt regulations governing the
18 form of payment, direct reimbursement to the injured employee upon
19 presentation to the employer of appropriate documentation and receipts,
and other matters necessary to the proper administration of the
supplemental job displacement benefit.

20 Section 4658.7(h) states that:

21 The administrative director shall adopt regulations for the administration of
22 this section, including, but not limited to, both of the following:

23 (1) The time, manner, and content of notices of rights under this section.

24 (2) The form of a mandatory attachment to a medical report to be
25 forwarded to the employer pursuant to paragraph (1) of subdivision (b) for
26 the purpose of fully informing the employer of work capacities and of
activity restrictions resulting from the injury that are relevant to potential
regular work, modified work, or alternative work. (§ 4658.7(h).)

1 AD Rule 10133.54 is a regulation adopted by the Administrative Director. AD Rule 10133.54

2 provides:

3 (a) This section and section 10133.55 shall only apply to injuries occurring
4 on or after January 1, 2004.

5 (b) When there is a dispute regarding the Supplemental Job Displacement
6 Benefit, the employee, or claims administrator may request the
7 administrative director to resolve the dispute.

8 (c) The party requesting the administrative director to resolve the dispute
9 shall:

10 (1) Complete Form DWC-AD 10133.55 "Request for Dispute Resolution
11 before the Administrative Director;"

12 (2) Clearly state the issue(s) and identify supporting information for each
13 issue and position;

14 (3) Attach all pertinent documents;

15 (4) Submit a copy of the request and all attached documents to the
16 administrative director and serve a copy of the request and all attached
17 documents on all parties; and

18 (5) Attach a signed and dated proof of service to the Form DWC-AD
19 10133.55 "Request for Dispute Resolution before the Administrative
20 Director."

21 (d) The opposing party shall have twenty (20) calendar days from the date
22 of the proof of service of the Request to submit the original response and
23 all attached documents to the administrative director and serve a copy of
24 the response and all attached documents on all parties.

25 (e) The administrative director or his or her designee may request
26 additional information from the parties.

27 (f) The administrative director or his or her designee shall issue a written
determination and order based solely on the request, response, and any
attached documents within thirty (30) calendar days of the date the
opposing party's response and supporting information is due. If the
administrative director or his or her designee requests additional
information, the written determination shall be issued within thirty (30)
calendar days from the receipt of the additional information. In the event
no decision is issued within sixty (60) calendar days of the date the
opposing party's response is due or within sixty (60) calendar days of the
administrative director's receipt of the requested additional information,
whichever is later, the request shall be deemed to be denied.

(g) Either party may appeal the determination and order of the
administrative director by filing a written petition together with a
declaration of readiness to proceed pursuant to section 10250 within twenty
calendar days of the issuance of the decision or within twenty days after a

1 request is deemed denied pursuant to subdivision (f). The petition shall set
2 forth the specific factual and/or legal reason(s) for the appeal as set forth in
section 10294.5 of title 8 of the California Code of Regulations.¹³

3 (Cal. Code Regs., tit. 8, § 10133.54.)

4 AD Rule 10133.54 permits an employee or claims administrator to request that the
5 Administrative Director resolve a SJDB dispute. (Cal. Code Regs., tit. 8, § 10133.54(b).) Once such a
6 request is made, the Administrative Director “shall issue a written determination and order based on the
7 request” (Cal. Code Regs., tit. 8, § 10133.54(f).) If the Administrative Director issued a decision
8 resolving a SJDB dispute, the employee or claims administrator then has twenty calendar days to appeal
9 the Administrative Director’s decision to the WCAB. (Cal. Code Regs., tit. 8, § 10133.54(g).) If the
10 request to the Administrative Director to resolve a SJDB dispute was deemed denied, the employee or
11 claims administrator has twenty days to appeal the Administrative Director’s decision to the WCAB.
12 (*Ibid.*)

13 AD Rule 10133.54 is adjudicatory in nature in that it requires the Administrative Director to issue
14 a written determination and order concerning a SJDB dispute. (Cal. Code Regs., tit. 8, § 10133.54(f).)
15 Furthermore, AD Rule 10133.54 limits the period of time for parties to appear before the WCAB. (Cal.
16 Code Regs., tit. 8, § 10133.54(g).) It provides that a party with a SJDB dispute may only seek
17 adjudication with the WCAB after a dispute resolution determination by the Administrative Director and
18 within twenty days of that determination. (*Ibid.*)

19 AD Rule 10133.54 restricts and usurps the exclusive adjudicatory power of the WCAB because it
20 exceeds the expressed language of sections 4658.5(c) and 4658.7(h). Pursuant to section 4658.5(c), the
21 Administrative Director is authorized by statute to adopt regulations governing the form of payment and
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25 ¹³ Effective 2014, AD Rule 10294.5 was renumbered to 10208.11 without any changes. (Cal. Code Regs., tit. 8, § 10208.11.)
26 AD Rule 10208.11 implements AD Rule 10133.54 and provides a procedure for a party to appeal the determination and order
27 of the Administrative Director regarding a SJDB voucher. (*Ibid.*) To the extent that AD Rule 10208.11 is viewed separately
from AD Rule 10133.54, it would be invalid for the same reasons discussed herein.

1 reimbursement of the program and “other matters necessary to the proper *administration*¹⁴ of the
2 supplemental job displacement benefit.” (§ 4658.5(c), emphasis added.) Similarly, pursuant to section
3 4658.7(h), the Administrative Director is authorized by statute to adopt regulations for the *administration*
4 of the SJDB program, such as regulations concerning notices and medical reporting. (§ 4658.7(h).)

5 Neither statute authorizes the Administrative Director to *adjudicate*¹⁵ SJDB disputes. As
6 discussed above, the power to adjudicate workers’ compensation claims is reserved exclusively to the
7 WCAB. (§§ 5300, 5307; see 1 CA Law of Employee Injuries & Workers’ Comp § 1.12 (2018) [“The
8 nonjudicial functions of the Division of Workers’ Compensation are under the control of the
9 Administrative Director”].) Therefore, to the extent that AD Rule 10133.54 restricts the
10 adjudicatory power of the WCAB, it is invalid, as it exceeds the statutory authority granted to the
11 Administrative Director to *administer* the SJDB program. (*Mendoza, supra*, 75 Cal.Comp.Cases at
12 pp. 640-641; *Navarro, supra*, 79 Cal.Comp.Cases at p. 427; *Scudder, supra*, 2011 Cal. Wrk. Comp. P.D.
13 LEXIS 138, *7.)

14 We disagree that the language in section 4658.5(c) grants implied adjudicatory powers to the
15 Administrative Director. (See AD’s Response, p. 2:20-6:21.) First, we note that section 4658.5(c) is not
16 the applicable enabling statute here as it applies to injuries occurring on or after January 1, 2004 and
17 before January 1, 2013. (§ 4658.5(a).) As discussed above, the applicable enabling statute here is section
18 4658.7(h), which applies to injuries occurring on or after January 1, 2013. Nevertheless, both sections
19 4658.5(c) and 4658.7(h) restrict the Administrative Director to the administration of the SJDB. Section
20 4658.5(c) specifically authorizes the Administrative Director to adopt regulations governing “other
21 matters necessary to the proper administration” of the SJDB. (§ 4658.5(c).) Read in conjunction with
22 section 4658.7(h), which provides that the Administrative Director “shall adopt regulations for the
23

24 ¹⁴ The word “administration” means “the act or process of administering something.” (Merriam-Webster Online Dict.,
25 <<https://www.merriam-webster.com/dictionary/administration>> [as of January 2, 2020].) The word “administer” means “to
26 manage or supervise the execution, use, or conduct of.” (Merriam-Webster Online Dict., <[https://www.merriam-
webster.com/dictionary/administer](https://www.merriam-
27 webster.com/dictionary/administer)> [as of January 2, 2020].)

¹⁵ The word “adjudicate” means “to make an official decision about who is right in (a dispute): to settle judicially.” (Merriam-
Webster Online Dict., <<https://www.merriam-webster.com/dictionary/adjudicate>> [as of January 2, 2020].)

1 administration” of the SJDB, we conclude that the Legislature did not create a statutory exception here,
2 implied or expressed, to the WCAB’s exclusive adjudicatory powers. (See footnote 12, *infra*.)

3 Of note, we are aware that the WCAB’s exclusive jurisdiction to adjudicate workers’
4 compensation claims is subject to affirmative defenses such as the statute of limitations. In workers’
5 compensation cases, there is a statute of limitations that specifically defines the time in which an injured
6 worker must file their application for adjudication of benefits. (§ 5405.) There are also principles of
7 substantial justice and liberality of statutory interpretation that are constitutionally and statutorily
8 prescribed in a workers’ compensation case. (See § 3202.) For instance, the WCAB “has broad
9 equitable powers with respect to matters within its jurisdiction. [Citation].” (*Truck Ins. Exchange v.*
10 *Workers’ Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685].)
11 “[E]quitable doctrines such as laches are applicable in workers’ compensation litigation. [Citations].”
12 (*Ibid.*) Furthermore, as discussed in footnote 12, there are statutory exceptions to the WCAB’s exclusive
13 adjudicatory jurisdiction in sections 3715(c) (workers’ compensation insurance), 4603.6(f) (medical
14 bills), 4610 (utilization review), and 4610.6 (independent medical review). (§§ 3715(c), 4603.6(f), 4610
15 and 4610.6.)

16 Specifically, the WCAB’s exclusive jurisdiction to adjudicate SJDB disputes is guided by the
17 statutory limitations set forth in sections 4658.5, 4658.6, and 4658.7. These include limitations on the
18 amount and usage of the voucher, expiration of the voucher, and exceptions to the entitlement of the
19 voucher. (§§ 4658.5, 4658.6, 4658.7.) In other words, while the WCAB maintains exclusive jurisdiction
20 to adjudicate SJDB disputes, this exclusive jurisdiction is subject to affirmative defenses and the
21 statutory limitations as determined by the trier of fact in light of the evidence and applicable
22 circumstances.

23 We further observe that an initial determination of SJDB eligibility by the Administrative Director
24 abrogates the WCAB’s exclusive adjudicatory power and is not consistent with the powers granted to the
25 Administrative Director. For instance, we observe that the Administrative Director’s initial
26 determination regarding disputed medical bills is distinct from an initial determination regarding SJDB
27 disputes because the former is based on statute (§ 4603.6(f)) and the latter is based on a regulation (Cal.

1 Code Regs., tit. 8, § 10133.54). A statute¹⁶ is a law enacted by the Legislature. A regulation is a rule
2 issued by a governmental agency and must be authorized by statute. As discussed above, a regulation¹⁷
3 is invalid if it is inconsistent with or exceeds the scope of the enabling statute. (*Mendoza, supra*, 75
4 Cal.Comp.Cases at p. 640.) Thus, while the Administrative Director may properly make an initial
5 determination regarding disputed medical bills, this is not the case with SJDB disputes. In short, the
6 WCAB maintains exclusive jurisdiction to adjudicate workers' compensation claims unless there is a
7 statutory carve out as discussed in footnote 12, *infra*.

8 Additionally, requiring a party to file an appeal within a specified timeframe is not within the
9 Administrative Director's administrative authority because, as discussed above, this requirement restricts
10 a party from accessing the jurisdiction of the WCAB. (See SCIF's Petition for Reconsideration, p. 5:9-
11 6:21.) AD Rule 10133.54, subdivision (g), provides that a party may seek adjudication with the WCAB
12 only after a determination from the Administrative Director and within 20 days of that determination.
13 This implies that a party is not able to seek the jurisdiction of the WCAB until a certain time condition is
14 met.

15 We are not convinced that the absence of a penalty for failing to meet the 20-day deadline
16 prescribed in AD Rule 10133.54, subdivision (g), means that a party is not restricted from accessing the
17 jurisdiction of the WCAB. (See AD's Response, p. 6:22-9:10.) First, this interpretation would make the
18 deadline in subdivision (g) superfluous. A reading that renders part of a regulation superfluous is to be
19 avoided. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1048; see *Wells v.*
20 *One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1207.) Second, as the case before us

22 ¹⁶ The Merriam-Webster online dictionary defines "statute" as "a law enacted by the legislative branch of government."
23 (Merriam-Webster Online Dict., <<https://www.merriam-webster.com/dictionary/statute>> [as of January 2, 2020].) Black's
24 Law Dictionary defines "statute" as a "law passed by a legislative body; specif., legislation enacted by any lawmaking body,
25 such as a legislature, administrative board, or municipal court." (Black's Law Dict. (10th ed. 2014) p. 1633, col. 1.)

26 ¹⁷ *Cooper v. Swoap* (1974) 11 Cal.3d 856 (864) ["administrative regulations promulgated under the aegis of a general statutory
27 scheme are only valid insofar as they are authorized by and consistent with the controlling statutes."] The Merriam-Webster
online dictionary defines "regulation" as "an authoritative rule dealing with details or procedure" and "a rule or order issued
by an executive authority or regulatory agency of a government and having the force of law." (Merriam-Webster Online
Dict., <<https://www.merriam-webster.com/dictionary/regulation>> [as of January 2, 2020].) Black's Law Dictionary defines
"regulation" as "[c]ontrol over something by rule or restriction . . ." (Black's Law Dict. (10th ed. 2014) p. 1475, col. 1.)

1 demonstrates, this subdivision is properly interpreted in terms of jurisdiction. The WCJ in the instant
2 case found that applicant's appeal from the Administrative Director's presumed denial of his request for
3 dispute resolution was untimely thereby divesting the court's jurisdiction to adjudicate applicant's
4 entitlement to a SJDB voucher.

5 Furthermore, we disagree with the contention that the validity of AD Rule 10133.54 is not properly
6 before us. (See AD's Response, p. 9:12-11:21.) As mentioned, the WCJ found that applicant's appeal
7 from the Administrative Director's presumed denial of his request for dispute resolution was untimely,
8 bringing this jurisdictional determination properly before us when applicant sought reconsideration.
9 More importantly, the WCAB has broad adjudicatory powers concerning the recovery of workers'
10 compensation benefits or the recovery of any right or liability regarding injuries arising out of and in the
11 course of employment. (§§ 133, 3600(a), 5300(a).) These broad powers include adjudicating issues that
12 are not directly before us in order to carry out the substantial rights of the parties. (§ 5708 [the Appeals
13 Board "shall not be bound by the common law or statutory rules of evidence and procedure, but may
14 make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the
15 substantial rights of the parties and carry out justly the spirit and provisions of the division."]; *Pasquotto*
16 *v. Hayward Lumber et al.* (2006) 71 Cal.Comp.Cases 223, fn. 7 (Appeals Board en banc) [". . . it is
17 settled law that a grant of reconsideration has the effect of causing 'the whole subject matter (to be)
18 reopened for further consideration and determination' (citation) and of '(throwing) the entire record open
19 for review.' (Citation).].)

20 Therefore, for these reasons, we hold that AD Rule 10133.54 is invalid because it exceeds the
21 statutory authority granted to the Administrative Director under sections 4658.5(c) and 4658.7(h), and
22 restricts the exclusive adjudicatory power of the WCAB to adjudicate compensation claims, including
23 disputes over SJDB vouchers. Our decision here does not address whether there *could* be an alternative
24 dispute resolution process that is within the Administrative Director's authority to implement in the
25 context of SJDB disputes. (See AD's Response, p. 3:20-4:1.) Our holding here is that AD Rule
26 10133.54, as written, is invalid.

1 **B. An employer must show that it made a bona fide offer of regular, modified, or**
2 **alternative work in order to avoid liability for a supplemental job displacement**
3 **benefits voucher.**

4 Turning to the case before us, we previously decided in our July 31, 2018 Opinion that applicant
5 is entitled to a SJDB voucher.¹⁸ Section 3370 provides that inmates are entitled to workers'
6 compensation benefits and sets forth the requirements for compensation. Section 3370(e) states in
7 pertinent part that, "Notwithstanding any other provision of this division, an employee who is an inmate,
8 as defined in subdivision (e) of Section 3351 who is eligible for vocational rehabilitation services as
9 defined in Section 4635 shall only be eligible for direct placement services." (§ 3370(e).) In 2004,
10 Senate Bill 899 (SB 899) terminated vocational rehabilitation benefits as of January 1, 2009. (*Weiner v.*
11 *Ralphs Co.* (2009) 74 Cal.Comp.Cases 736, 742 (Appeals Board en banc).) We note, however, that the
12 Legislature did not amend section 3370 to preclude or limit provision of a SJDB voucher to inmates. The
13 fact that the Legislature did not amend section 3370 to preclude or limit provision of a SJDB voucher
14 persuades us that the Legislature did not intend to restrict inmates from this benefit. "The Legislature is
15 presumed to be aware of all laws in existence when it passes or amends a statute. [Citations.] The
16 failure of the Legislature to change the law in a particular respect when the subject is generally before it
17 and changes in other respects are made is indicative of an intent to leave the law as it stands in the
18 aspects not amended. [Citations.]" (*Geletko v. Cal. Highway Patrol* (2016) 81 Cal.Comp.Cases 661,
19 667 [2016 Cal. Wrk. Comp. P.D. LEXIS 202] citing *In re Greg F.* (2012) 55 Cal.4th 393, 407, quotation
20 marks and citations omitted.) Hence, inmates, like other injured workers, are equally eligible for SJDB
21 vouchers under the statute.

22 Section 4658.7(b) provides that an injured employee with permanent partial disability is entitled
23 to a SJDB voucher unless the employer makes an offer of regular, modified, or alternative work that is
24 made no later than the specified period provided by section 4658.7(b)(1), and the offer is for regular
25 work, modified work, or alternative work lasting at least 12 months. (§ 4658.7(b).)

26 _____
27 ¹⁸ We note that irrespective of the WCJ's finding that applicant's appeal from the Administrative Director's presumed denial of his request for dispute resolution was untimely, the issue of applicant's entitlement to SJDB is also properly before us because, as the Administrative Director admits in its Response, the Administrative Director's alternative dispute resolution program is voluntary.

1 Section 4658.1 defines regular, modified, and alternative work as follows:

2 (a) “Regular work” means the employee’s usual occupation or the position
3 in which the employee was engaged at the time of injury and that offers
4 wages and compensation equivalent to those paid to the employee at the
5 time of injury, and located within a reasonable commuting distance of the
6 employee’s residence at the time of injury.

7 (b) “Modified work” means regular work modified so that the employee
8 has the ability to perform all the functions of the job and that offers wages
9 and compensation that are at least 85 percent of those paid to the employee
10 at the time of injury, and located within a reasonable commuting distance
11 of the employee’s residence at the time of injury.

12 (c) “Alternative work” means work that the employee has the ability to
13 perform, that offers wages and compensation that are at least 85 percent of
14 those paid to the employee at the time of injury, and that is located within
15 reasonable commuting distance of the employee’s residence at the time of
16 injury.

17 (§ 4658.1(a) – (c).)

18 As explained further below, we conclude that in order to qualify as an exception to the entitlement to a
19 SJDB voucher, the offer of regular, modified, or alternative work must be bona fide.¹⁹

20 In *Jackson v. California Prison Industry Authority* (August 2, 2017, ADJ9968628) [2017 Cal.
21 Wrk. Comp. P.D. LEXIS 368, *5], defendant sent a job offer to applicant that stated, “You have
22 voluntarily terminated your employment due to your release from prison and are no longer available for
23 employment.” (*Ibid.*) The WCJ in *Jackson* held that,

24 Defendant did not offer Applicant any work, and much less any work
25 lasting at least 12 months. Even though Applicant was willing and ready to
26 perform modified work, both the CALPIA Return to Work Coordinator and
27 the Claims Representative informed the Applicant attorney there was no
available work for Ms. Jackson. [citation] The act of sending the job offer
notice, by itself, did not establish a bona fide job offer. Defendant
indicated to Applicant that she was ‘no longer available for employment,’
and that there were no positions available. (*Id.* at p. *6.)

28 ¹⁹ The Merriam-Webster online dictionary defines “bona fide” as: “made in good faith without fraud or deceit”, “neither
29 specious nor counterfeit: GENUINE”, and “made with earnest intent: SINCERE.” (Merriam-Webster Online Dict.,
30 <<https://www.merriam-webster.com/dictionary/bona%20fide>> [as of January 2, 2020].) Black’s Law Dictionary has a similar
31 definition: “1. Made in good faith; without fraud or deceit. 2. Sincere; genuine.” (Black’s Law Dict. (10th ed. 2014) p. 210,
32 col. 2.) A bona fide offer is therefore an offer made in good faith or a sincere offer. (See also *Leach v. Home Savings & Loan*
33 *Assn.* (1986) 185 Cal.App.3d 1295, 1301-1302, quoting Black’s Law Dict. (4th ed. 1968), p. 223, col. 2 [defining a “bona fide
34 transaction” as a “transaction which the parties operate ‘[in] or with good faith; honestly, openly, and sincerely; without deceit
35 or fraud’”]; *Merrill v. Dept. of Motor Vehicles* (1969) 71 Cal.2d 907, 920-921 [analyzing legal uses of the term and defining a
36 “bona fide car dealer” as one acting with honesty, fair dealing and freedom from deceit].)

1 The *Jackson* decision analogized to *Robertson v. Workers' Comp. Appeals Bd.* (2003) 112
2 Cal.App.4th 893 [68 Cal.Comp.Cases 1567]. In *Robertson*, applicant was terminated for cause that was
3 unrelated to his injuries before he reached permanent and stationary status and became eligible for
4 vocational rehabilitation. (*Id.* at pp. 897-898.) Defendant sent applicant a letter that stated in pertinent
5 part, "Invoicer is the position [defendant] would have offered [applicant] had he not been terminated for
6 breaching the attendance policy." (*Id.* at p. 898, underline in original.) The Court of Appeal held that
7 defendant's offer of the invoicer job did not constitute an offer of alternative work that satisfied
8 defendant's vocational rehabilitation obligation because defendant did not *actually* offer applicant the
9 alternative position of invoicer when it used the phrase "would have offered." (*Id.* at p. 901, underline in
10 original.) (See also *White v. Workers' Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 525 [2004 Cal.
11 Wrk. Comp. LEXIS 133] (writ den.) [defendant properly delayed offering applicant his usual and
12 customary occupation even though he was medically released to regular work eight months earlier
13 because defendant was concerned that applicant's usual and customary occupation did not meet his
14 prophylactic work restrictions]; and *K-Mart v. Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases
15 1209 [1996 Cal. Wrk. Comp. LEXIS 3399] (writ den.) [defendant's offer of modified work at a former
16 store location 300 miles from applicant's residence was not proper].) We, therefore, conclude that an
17 offer of regular, modified, or alternative work must be bona fide.

18 We are cognizant that employment in a prison setting is unique in that inmate workers cannot
19 return to an inmate job once they are released from prison, making it impossible for a prison employer to
20 make a bona fide job offer. Our review of statutes and case law, however, leads us to conclude that an
21 employer's inability to offer regular, modified, or alternative work does not release an employer from the
22 statutory obligation to provide a SJDB voucher. (§ 4658.7(b).) "Labor Code section 3202 requires the
23 courts to view the Workers' Compensation Act from the standpoint of the injured worker, with the
24 objective of securing the maximum benefits to which he or she is entitled." (*Rubalcava v. Workers'*
25 *Comp. Appeals Bd.* (1990) 220 Cal.App.3d 901, 910 [55 Cal.Comp.Cases 196].) Thus, absent a bona
26 fide offer of regular, modified, or alternative work, regardless of an employer's ability to make such an
27 offer, and regardless of an employee's ability to accept such an offer, an employee is entitled to a SJDB

1 voucher. To hold otherwise would lead to absurd results. An inmate worker released from prison would
2 not have a bona fide offer to return to work and at the same time would not receive a SJDB voucher to
3 develop new skills to re-enter the workforce. We do not believe that the Legislature intended this result.
4 Thus, we conclude that an employer must show that it made a bona fide offer of regular, modified, or
5 alternative work in order to avoid liability for a SJDB voucher.

6 **C. On the record before us, defendant could not and did not provide a bona fide offer of**
7 **regular, modified, or alternative work and, therefore, applicant is entitled to a**
8 **supplemental job displacement benefits voucher.**

9 We now turn to the issue of whether defendant sent applicant a bona fide offer of regular,
10 modified, or alternative work. Here, defendant sent applicant a Notice of Offer of Regular, Modified, or
11 Alternative Work. (Joint Exhibit 1, Notice of Offer of Regular, Modified, or Alternative Work.) The
12 letter attached to the Notice states, “We are advising you that your employer has either your regular work
13 or a modified or an alternative job available for you.” (*Id.* at p. 2) The Notice, however, also states,
14 “SUBJECT TO APPLICANT VERIFYING THEY ARE LAWFULLY QUALIFIED TO ACCEPT
15 EMPLOYMENT AS AN INMATE LABORER, YOU HAVE VOLUNTARILY TERMINATED YOUR
16 EMPLOYMENT DUE TO YOUR RELEASE FROM PRISON AND ARE NO LONGER AVAILABLE
17 FOR EMPLOYMENT.” (*Id.* at p. 4, capitalization in original.)

18 We conclude that as in *Robertson and Jackson*, defendant here could not extend a bona fide offer
19 of regular, modified, or alternative work to applicant. The offer defendant provided to applicant states
20 that applicant is “no longer available for employment” because of his release from prison. Therefore,
21 defendant could not satisfy the exemption to providing a SJDB voucher.

22 Defendant’s citations to *Del Taco v. Workers’ Comp. Appeals Bd. (Gutierrez)* (2000) 79
23 Cal.App.4th 1437, 1441 [65 Cal.Comp.Cases 342], *Taro v. Atascadero State Hospital* (January 17, 2014,
24 ADJ7084316, ADJ7530582) [2014 Cal. Wrk. Comp. P.D. LEXIS 82, *4], and *Barcnas v. Ramco*
25 *Enterprises* (February 24, 2015, ADJ8311152) [2015 Cal. Wrk. Comp. P.D. LEXIS 91, *4] are
26 inapposite. They do not support the argument that an employer is released from making a bona fide
27 return to work offer and, at the same time, released from offering a SJDB voucher when events unrelated
to the injury, i.e., applicant’s release from prison, prevent applicant from accepting a return to work offer.

1 Unlike the case before us, the employer in each case, *Gutierrez, Taro, and Barcenas*, fulfilled its
2 statutory obligation by providing a bona fide return to work offer, regardless of the employee's ability to
3 accept the return to work offer. In this case, defendant could not and did not make a bona fide return to
4 work offer. Thus, defendant is not exempt from providing a SJDB voucher.

5 Accordingly, for the reasons set forth above, we hold that:

6 (1) AD Rule 10133.54 is invalid because it exceeds the statutory authority
7 granted to the Administrative Director under sections 4658.5, subdivision
8 (c), and 4658.7, subdivision (h), and restricts the exclusive adjudicatory
9 power of the WCAB to adjudicate compensation claims, including disputes
10 over supplemental job displacement benefits; and

11 (2) an employer must show that it made a bona fide offer of regular,
12 modified, or alternative work in order to avoid liability for a supplemental
13 job displacement benefit voucher.

14 As our decision after reconsideration (en banc), we affirm our July 31, 2018 decision.

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1 For the foregoing reasons,

2 **IT IS HEREBY ORDERED** as the Decision After Reconsideration of the Workers'
3 Compensation Appeals Board that our July 31, 2018 decision is **AFFIRMED**.

4 **WORKERS' COMPENSATION APPEALS BOARD (EN BANC)**

5
6 /s/ Katherine A. Zalewski
KATHERINE A. ZALEWSKI, Chair

7
8 /s/ Deidra E. Lowe
DEIDRA E. LOWE, Commissioner

9
10 /s/ Marguerite Sweeney
MARGUERITE SWEENEY, Commissioner

11
12 /s/ José H. Razo
JOSÉ H. RAZO, Commissioner

13
14 /s/ Katherine Williams Dodd
KATHERINE WILLIAMS DODD, Commissioner

15
16 /s/ Craig Snellings
CRAIG SNELLINGS, Commissioner

17
18
19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20 **04/13/2020**

21
22 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
23 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

24 **ANTHONY DENNIS**
25 **PAUL T. DOLBERG – MASTAGNI HOLSTEDT, A.P.C.**
26 **NATASHA M. HEALE – STATE COMPENSATION INSURANCE FUND**
OFFICE OF THE ADMINISTRATIVE DIRECTOR – LEGAL UNIT

27 **LSM/AS/abs**