

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

ANDRES GOMEZ, *Applicant*

vs.

THE VONS COMPANIES, INC., permissibly self-insured, *Defendants*

**Adjudication Numbers: ADJ504245 (MON 0348328); ADJ1796774 (MON 0348329)
Marina del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant Andres Gomez seeks reconsideration of the September 6, 2022 Joint Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found, in pertinent part, that the two Supplemental Job Displacement Benefit (SJDB) vouchers that applicant received expired on July 17, 2019 and July 22, 2019,¹ two years after they were issued, and that Labor Code,² section 4658.5 prohibits payment or reimbursement of unused funds after the vouchers expired.

Applicant contends that the vouchers should not be deemed expired and that instead they should be deemed "used" when he signed the vouchers and selected a retraining program.

We did not receive an answer from defendant the Vons Companies, Inc. 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, which we adopt and incorporate, and we have reviewed the record in this matter. Based on the WCJ's Report and for the reasons discussed below, we deny reconsideration.

Section 4658.5(d) provides that a "voucher issued after January 1, 2013, shall expire two years after the date the voucher is furnished to the employee or five years after the date of the injury, whichever is later." (§ 4658.5(d).) "The employee shall not be entitled to payment or

¹ Although the September 6, 2022 Joint Findings of Fact states that one of the vouchers expired on July 22, 2017, we believe this is a typographical error and that the WCJ meant to write that both vouchers expired on July 17, 2019.

² All subsequent references are to the Labor Code unless otherwise indicated.

reimbursement of any expenses that have not been incurred and submitted with appropriate documentation to the employer prior to the expiration date.” (§ 4658.5(d).)

The two vouchers here at issue for injuries dated January 29, 2007 and March 3, 2007 were issued on July 17, 2017. (Joint Findings of Fact; Defendant’s Exhibit B, Letter from Albertson’s attaching two vouchers.) Per section 4658.5(d), these two vouchers expired on July 17, 2019.

Applicant contends that even though the vouchers were issued on July 17, 2017, he did not sign them until October 24, 2018 and that defendant then delayed eight months in releasing the voucher funds, which was done on June 13, 2019. (Petition, pp. 4:23-5:9; Applicant’s Exhibit 3, Signed voucher; Applicant’s Exhibit 4, Check of \$12,000.00 to Londo Welding, Inc.) Even if, **under a liberal interpretation**, we toll the expiration date of the two vouchers by eight months, which was a delay that applicant suffered through no fault of his own, the tolled expiration date of the vouchers would be March 17, 2020. The welding school applicant chose for retraining returned \$3,163.82 in unused voucher funds to defendant on December 31, 2020, which is after the tolled expiration date of March 17, 2020. (Defendant’s Exhibit A, Letter from welding school returning unused funds.) Therefore, even if we take into account the eight-month delay caused by defendant, the vouchers would still have expired by the time they were returned. Section 4658.5(d) is clear that applicant is not entitled to reimbursement of any expenses that have not been incurred and submitted prior to the expiration date. Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant Andres Gomez's Petition for Reconsideration of the September 6, 2022 Joint Findings of Fact is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 28, 2022

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

**ANDRES GOMEZ
LAW OFFICES OF FRED L. FONG, APC
MORGAN & LEAHY, LLP**

LSM/pc

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
ON PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

1. Dates of Injury: January 29, 2007, March 3, 2007
 Parts of Body Injured: Low Back, Hernia and Psyche, Right Foot and Right Ankle

2. Identity of Petitioner: **Applicant** filed the Petition.
 Timeliness: The petition was timely filed.
 Verification: The petition was properly verified.

3. Date of issuance of Findings and Award: September 6, 2022

4. **Petitioner’s contentions:**
 A. The WCJ’s finding that the voucher has expired is not supported by substantial evidence and contrary to the Labor Code.

**II
FACTS**

Applicant, Andres Gomez, while employed by the Vons Companies, Incorporated, as a deliver driver, sustained two separate dates of injury. The first injury occurred on January 29, 2007 when Applicant injured his low back, hernia and psyche. This claim was initially resolved by a Stipulated Award approved by WCJ Ward (ADJ504245)

The second injury occurred on March 3, 2007 and involved Applicant’s right foot, right ankle and psyche. This claim was resolved initially by Stipulated Award approved by WCJ Ward. (ADJ1796774) Subsequently both cases were resolved by a Joint Compromise and Release approved by WCJ Sandra Graper on June 12, 2018.

Applicant received two Supplemental Job Displacement Vouchers that were issued on July 17, 2017. One voucher was in the amount of \$8,000.00 and the other was in the amount of \$4,000.00.

The parties proceeded to trial on issues involving the Supplemental Job Displacement Benefit Vouchers.

Issues were identified for adjudication in both cases as follows: Supplemental Job Displacement Benefit Vouchers (issued on July 17, 2017 – one for \$8,000 and one for \$4,000).

1. Attorney’s fees.
2. Penalties and interest.
3. Expiration of Supplemental Job Displacement Benefits Vouchers.

- a. Did the vouchers expire on July 22, 2019?
 - i. Pursuant to CCR section 10133.60 and CCR section 10116.9
 - ii. Labor Code section 4658.5 and CCR section 10116.9.
 - iii. Does the fact that the applicant used the voucher and there was an unused portion entitle the applicant to another retraining program (not suspended and/or extend the two-year or five-year expiration date as set forth in CCR 10133.31).

Judicial notice was taken that there were two separate vouchers issued by Defendant as noted in the exhibits offered by the parties.

Entered into evidence on behalf of Applicant, with no objection by Defendant, were the following items:

1. Letter from the Law Offices of Fred L. Fong, by Attorney Andrew Fong, dated February 16, 2021.
2. Two letters from Claims Examiner Alfred Z. Tumandao regarding issuing vouchers.
3. Supplemental Job Displacement Nontransferable Training Voucher Form for Injuries Occurring Between 1/1/04 and 12/31/12 from the Welding Certification Center and the applicant, dated 12/2/2021.
4. A check for \$12,000, payable to Londo Welding, from Alfred Tumando, self-administrator, dated 6/13/2019.

Entered into evidence on behalf of Defendant, with no objection by Applicant were following items:

1. Letter from Welding Certification Center regarding Unused Voucher Funds, from Vice President Vanessa Londo, dated 12/31/2020.
2. Letter from Albertsons Regarding Voucher to Applicant and Applicant's Attorney with the Supplemental Job Displacement Form, from Alfred Tamadaou, dated 7/17/2017.
3. Benefits Printout from Sedgwick dated 7/19/2021.

Marked for identification was a letter from Applicant Regarding Voucher to Applicant and Applicant's Attorney with Supplemental Job Displacement Form Request For Reimbursement of Expenses, dated 2/12/2021.

Applicant testified as indicated in the Minutes of Hearing and Summary of Evidence.

On direct testimony he testified that there was an unused portion of the voucher funds and he wanted to use it to go to a different school. He identified potential schools and stated that he wanted to learn how to drive a truck. He testified that that he wanted to use the leftover funds

(\$3,100) and would try to obtain financing through the truck driving school because the \$3,100.00 would not be enough.

He did not use a counselor because a counselor would get a cut of his money, and that would reduce the availability of the funds. If there is a shortfall, he is willing to put his own money in. He also testified that if there's a shortfall, the (new) school will be able to finance it. Each school has different ways to make up the money. It could be a line of credit or he would have to use his own credit card.

He did not remember getting the \$8,000.00 and the \$4,000.00 vouchers in 2017. He said it was about a year later, in 2018, when he went to court after there was a penalty, and it was in the middle of summer when he was finally able to get the vouchers issued by Vons.

He selected the Pomona Welding School in the summer of 2018. Vanessa Londo processed it, but they didn't get paid for six months, so he used his money for the registration fee. His attorney went to court over this, and there was another six month wait. In the summer of 2019, the monies were finally released, and they paid the school. His estimation is the monies were first made available or were released closed to the end of the year and the money went to Vanessa. He said Vanessa made attempts for about six months became aware of Pomona Welding School in late summer of 2018 and approximately a year later, the funds were released.

When he went to Pomona, he was not able to get everything because there was an increase in the fees, so he only did one level. He completed that level. The \$12,000.00 originally was enough to complete the course. He said with the original course, the Union Glaziers Company hired him on the spot. The training was no longer adequate by the time of the next course, and the prices had increased, and Level 4 was no longer available and then he would have to pay out of pocket for the additional levels.

His opportunity to have a Level 4 certificate was gone, and that was his original goal. There was no longer an adequate amount of money for the Level 4. He said COVID hit, and the school closed down, and it limited them to take him back in. They did not admit that it was a Level 2 instead of a Level 4 course. He said there is a difference between a Level 4 and a Level 2. He retook another course and felt taken advantage of by Ms. Londo. This was a change in the contract. Also, he was not reimbursed his \$75, and he felt that he had been taken advantage of, and he wanted them to return the funds so he could go to a new school.

It was in the middle of December of 2019 that he finished the course, and he asked within a month or two for Vanessa to return the funds to Vons. He had the Level 1, but it was not sufficient enough funds to do the Level 2. He tried to contact Vons to use another school. He did it by fax, email and phone calls. He spoke with the people, but not with Alfredo. Alfredo would never return his calls. It was in the beginning of the year, initially he said it was 2019 but clarified it was 2020, when he was trying to contact Alfred at Vons. He said he definitely believed it was late December 2020. Then he also tried to contact him again in the early part of 2021 because he wanted to use the unused funds, but he was ignored. No one return his calls.

On cross-examination, Applicant testified that he has selected one of the schools in his heart, but he has not submitted a request to Vons for any of these schools. He did incur expenses, which was a result of him going to DMV to register, get a Class B permit, air brakes permit and DMV registration. That was about four to five months ago. He has not requested reimbursement for these fees.

All of the schools were on the California Bureau of Postsecondary Vocational Education list. He never asked Ms. Londo to transfer his unused funds to one of these schools because they weren't allowed to do so. He would have to look to see when the first time was that he asked Vanessa to return the funds to Vons. It was by email. He would have to look at his email, but he also asked her verbally when he saw her at the school. He tried to ask her verbally the first time in a friendly manner. He knows he sent her an email, but he's not sure of the date. He has emails to Vanessa asking her to return the money back to Vons, and he indicated that he uses two email addresses (which he provided).

He testified that he did ask via email about classes because he wanted to take classes, and that email was 7/10/2020. He said that July 2021 was not right to return back to classes, and he's not sure if he sent this email. There may have been an email about settling out the claim or a deal to return the money to Vons or to him. He said that he didn't care if the money was returned to Vons or if the money was returned to him. He does recall receiving an email from Vanessa indicating that she would refund the money to Vons. His response was that he wanted the money refunded to him or to Vons because the prices of the courses were going up.

(The matter was adjourned and continued for further proceedings. At the next trial, Defendant continued her cross-examination of Applicant.)

Applicant testified that he did not remember any paperwork regarding the 2017 vouchers. Defense attorney shown Applicant Exhibit B (Letter from Albertson Regarding Voucher to Applicant and Applicant's Attorney with the Supplemental Job Displacement Form from Alfred Tamadou dated 7/17/2017) and Applicant acknowledged that he it was addressed to his PO Box, but stated that he did not see that document until a year later when Mr. Fong was going to fight it. He testified that Mr. Lindheim was his attorney at that time. This was regarding the voucher.

Upon reviewing the document, Applicant testified that it was dated July 17, 2019, but stated that he did not recall seeing that date. After reviewing the document, he agreed that document stated that the voucher must be used before the expiration date. Hhe was referred to the last line of the same page which read as follows: "All claims for expenses and reimbursement must be submitted to the claims adjuster before the expiration date". He said he was not sure if this document was provided to Vanessa. When asked if signed the document, he eventually testified that at some point he did signed the voucher and it was possible that he signed the voucher on October 25, 2018. After he signed the voucher, his attorney went to Court because payment had not been issued.

He stated that he believed that it's correct that Vons issued the payment to the school on June 13, 2019. He acknowledged that the received a penalty fee for the late payment of the voucher.

In October 2018, he submitted the voucher form and payment was issued in June 2019 by Vons. Prior to October 2018, he did not sign the form because he was not aware that he was supposed to sign. However, Vanessa was helping him out.

The date he received this settlement was May 14, 2019 and judicial notice was taken of a Joint Stipulation and Order dated May 14, 2019 and signed by the parties.

Applicant testified that the \$12,000.00 was enough, with the discounts made by the school, for all the courses that he needed to take.

When asked if he had to repeat a course, he said that he did not have to repeat the entire course but had to do additional hours. It cost money to do the additional hours. He believes that there was limited funding for additional courses as planned.

Applicant testified that his inability to complete the courses as planned did not have anything to do with the price increase. The original plan was Sheet Metal Arc Welding with two additional courses. That was the original plan. When asked if the original course did not include Level 4, his response was that it included sheet Metal Arc Welding with additional LABDS Certificate Training and oxycutting class course. It did not include Level 4.

Applicant testified that the original course included four levels.

At this point, impeachment evidence was offered on behalf of Defendant, which consisted of e-mails between the Applicant and the welding school and dated June 24, 2019. (Objection was made and they were marked for identification only.)

On the next trial date in response to the cross-examination of Defendant, when asked if the school was open (during the pandemic), Applicant testified that the school was holding private classes. He stated that he visited several times and it was closed sometimes and open sometimes. He could hear the classes in session, but they were not letting anyone in. If he drove by there, there were times that the building was closed.

Since the last trial, he located some of the e-mails where he asked Vanessa to return the funds back to Vons. He recalled sending e-mails to Vons about the money, and he shared some of these e-mails with this attorney. He believes he specifically asked the money be returned to Vons. He also testified that on several occasions he asked Vanessa to return the money to him. He stated that there was an e-mail where he told her he would prefer to settle rather than to send the funds to another school and this email was directed to Vanessa.

From December 2020 to January 2021, he did not contact Vons to request that he attend another school. He said that he did request reimbursement of \$2,600 from Vons. He said he did not know that none of the items for which he was seeking reimbursement was required for his training. He did request reimbursement for a laptop. He said the welding training that he received did not require a laptop, but he had a laptop. He did request reimbursement of tools for welding. He stated the school required the purchase of the welding tools. He knows this because it was on the registration form that said the tools were necessary. He agreed that the voucher payment

included the payment of tools. He said the ones on the school forms were different from the items that he was seeking reimbursement. He's not sure if he has withdrawn his request for reimbursement. He's not sure how he would withdraw that request. His attorney said that the request was withdrawn, so he would agree that the request was withdrawn, but he doesn't specifically recall why he did that.

When asked if he learned that the computer was not reimbursable, his response was that office equipment was listed, and to him, the laptop was office equipment.

He's not aware that there are different rules for the voucher depending on the date of injury. What he did know was what he obtained when he would Google on-line because he did not have a counselor.

The form he used in February 2021 was not the same form, but he doesn't recall receiving it. He has received a voucher from another company for a date of injury of January 2020. He's not sure if it includes other types of equipment. He stated that he would go to the website for the state and print out the forms himself.

He doesn't have any request for reimbursement pending before Vons now. He has requested from Vons reimbursement to go to another school other than Londo Welding. He's not sure when he submitted the request, but he asked Vons to transfer the money to another truck driving school. He's not sure if he submitted the request in 2021. He doesn't recall if he provided it to his attorney. He probably provided it to his attorney. He does not know if he sent a request form to Vons in writing asking to change schools.

He doesn't recall if he received anything that extended the expiration of the voucher because he wasn't at court. He just received a check. He didn't know if the funds were extended because he did not go to court. He does not recall receiving a \$1,000.00 payment on September 8, 2017. He said none of the monies went to him; it went to the school.

On redirect, Applicant stated that if it was possible for him to use the funds in 2020, he would have continued his training at Londo. It is his intention that the unused funds be applied to another school. The unused funds would go to GSF Trucking, and that is the school he selected. This is in reference to the monies being held by Vons.

On re-cross-examination, Applicant stated that the funds were still at Londo. He did not ask Vons to release the funds to GSF school. This was the end of Applicant's testimony. At the next hearing, testimony was taken of Vanessa Londo.

Vanessa Londo testified that she is the vice-president of financial, administrative and student services for Welding Certification Center doing business as Londo Welding, Incorporated. She is one of the confounders and they started in 2016.

She is familiar with the applicant. She described the business as a private welding school. Applicant was a student at the school. Prior to his enrollment, he made contact in 2018 indicating that he wanted to attend and use a work comp voucher. She submitted a completed voucher o

Vons and received two separate payments and she believes the amount was \$12,000.00, but she is not sure, but she could look it up. There was an agreement as to the courses, but a Level 4 certification was not one of the courses.

His first program was the Comprehensive Welding SMAW Structural Steel Program. The \$12,000 from the vouchers covered all supplies, because there was additional money, it also included two courses beyond that in a different process. Applicant completed the first program, plus he repeated the course for Level 3. He did not complete the Level 1 TIG or Level 2 TIG course. He repeated Level 3 because he failed it. He had to repeat it because it wasn't completed within the time frame of that class. The school covered the cost of the fee for him to repeat the course that he failed.

There was an increase of the cost of the training after 2018, but since the applicant registered in 2018, they gave him the charges for his coursework at the 2018 price instead of the 2019 price. She stated the cost changes each year. Applicant was allowed to pay the rate when he reserved in 2018 even though he did not start until 2019.

She testified that the school never closed down because of COVID-19. In 2019, Applicant needed to prepare for the written test, which would take place sometime in March (2020). This is the State test. Applicant was allowed to come back in February to prepare for the test. After COVID-19 started, the classes continued and were made available to the applicant. The witness stated that she did not take advantage of Mr. Gomez in any way. He, as well as all students, were allowed to come back and prepare for the test.

From January 1 to December 31, 2020, she was in communication with the applicant. There were multiple exchanges and she let him know that were courses that he could take to prepare for the test that he needed to take; but when the applicant did not take the courses, the funds were returned to Vons. There was never any email or other writing that said she was not going to send the funds back to Vons. There was discussion about a settlement to give him the funds directly instead of giving it to Vons. This was the unused amount that he wanted to use the money for something else. This happened at least of two occasion where he talked about settlement or equipment. She said she could not do this. Instead, she offered him another schedule for him to take the classes, not refund the money. But, he did not do this.

When Applicant enrolled in the classes, the funds were already there. The funds were returned at the end of the year after he did not continue with the classwork and that was at the end of 2020. There was \$3,100 in voucher funds that were available and returned. She said she was in communication with Applicant about five or six times about enrolling in classes, but never enrolled.

On cross-examination by Applicant's attorney, she state that she had other students that used a voucher for training at her school. She has been in business since 2016. From 2017 through 2018, there were other students who received the vouchers and she is familiar with the vouchers. She could not testify off the top of her head as to the number of students that used vouchers during the period of 2017 through 2018 or 2018 through the present.

She testified that she is familiar with the concept of vocational rehabilitation counselor or consultant (VRC). She knows that they help students, but does not know exactly what they do. Some of the students at her school have a VRC, and some do not. If they have a VRC, she works with the VRC regarding the courses.

In Applicant's case, they lower the rates to match the state rates. His budget was approximately \$12,000.00 and it was allocated to take the Comprehensive Welding SMAW Structural Steel Program and classes. At the end, there was \$3,100 leftover because Applicant did not use the money for further courses and did not enroll in additional courses. The funds were returned to the claims administrator.

The classes Applicant took were covered by the voucher. Applicant purchased student supplies and a code book. She was not sure if was from the voucher or out of pocket. No additional equipment was needed.

She did not recall when the applicant initially asked for settlement but it was written an email. She testified that the applicant was the only situation where funds were refunded because usually the funds are used. The funds were returned to the claims examiner either at the end of 2020 or the beginning of 2021.

She discussed her testimony only with Ms. Patterson prior to the hearing.

On redirect by the defense attorney, Ms. Londo state that reimbursement was not requested. What he wanted was welding equipment with the remaining funds. The welding equipment was not part of the program.

On re-cross by Applicant's attorney, repeated that they do not provide welding machines for the students because they are available for use while they are in class. She also said that there was no settlement because that is not what they are able to do because of the law for workers' comp. They returned the money and no money was given to the applicant.

On further redirect examination by defendant, Ms. Londo repeated that there was no settlement between the school and the injured worker.

On further re-cross by Applicant's attorney, Ms. Londo repeated that if there was unused funds, they have to return it to the insurance carrier and cannot pay it to the applicant.

Applicant is aggrieved by the Findings of Fact and Award issued in this case. No Answer to the Petition for Reconsideration has been filed.

III **DISCUSSION**

Applicant is agreed by the determination that he is not entitled to another re-training program based upon the determination that supplemental job displacement benefit vouchers have expired.

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the Opinion on Decision may seem skeletal, pursuant to Smales v. WCAB (1980) 45 CCC 1026, this Report and Recommendation cures that defect.

Two separate Supplemental Job Displacement Benefits Vouchers issued on July 17, 2017 in the amounts of \$8,000.00 and \$4,000.00. Applicant does not dispute the issue date of the vouchers and it is supported by the record. Applicant's testimony and earlier proceedings indicate that Applicant selected the Pomona Welding School for training as a welder in 2018. However, as well documented, Defendant delayed payment to the school and parties entered into a stipulation resolving the issues of late payment of the voucher that was approved by Judge Elliot Borska on May 14, 2019. Thereafter, as noted above, he received training from the Pomona Welding School, but did not complete the full program. Instead, he wanted to pursue another program at a different school.

Based upon the testimony of Applicant and the witness, Vanessa Lando, it is undisputed that there was an unused amount after payment for classes and supplies at Pomona Welding School. It was undisputed that Ms. Lando returned the balance of the unused funds back to the carrier.

Labor Code section 4658.5 applies to Applicant's dates of injury as both dates of injury occurred after January 1, 2004 and before January 1, 2013. The pertinent section states as follows:

(d) A voucher issued on or after January 1, 2013, shall expire two years after the date the voucher is furnished to the employee or five years after the date of injury, whichever is later. The employee shall not be entitled to payment or reimbursement of any expenses that have not been incurred and submitted with appropriate documentation to the employer prior to the expiration date.

Based upon the plain reading of the statute and the documentary and testimonial evidence, it was determined that Labor Code section 4658.5 prohibits payment or reimbursement of the unused funds because the vouchers expired prior to Applicant's request for payment for additional training.

Based upon the issuance of the vouchers on July 17, 2017, it was determined that the vouchers expired on July 17, 2019. Defendant's liability for the Supplemental Job Displacement Benefit expired after two years (July 17, 2019) as set forth in California Code of Regulations section 10133.60 and as defined in California Code of Regulations section 10116.9.

Based upon the determination that the vouchers expired prior to Applicant's request for payment for additional training, thus leaving an unused portion of the vouchers, there was no authority to suspend and/or extend the two year or five-year expiration date as set forth in California Code of Regulations section 10133.31. California Code of Regulations section 10133.31 specifically states that:

(g) The voucher will expire two years after the date it is furnished to the employee, or five years after the date of injury, whichever is later. The employee may not receive payment or reimbursement of any expense that have not been incurred and submitted with appropriate documentation to the claims administrator prior to the expiration date.

Finally, it is noted that Applicant has requested a different interpretation of the statutes and regulation pursuant to Labor Code section 3202. This request appears to be directed solely to the Appeals Board.

IV
RECOMMENDATION

It is respectfully recommended that the Applicant's Petition for Reconsideration be denied.

DATED: 10/20/2022
JACQUELINE A. WALKER
Workers' Compensation Administrative Law Judge