

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

ALAN BARLAM, *Applicant*

vs.

RETURN-TO-WORK SUPPLEMENT PROGRAM, *Defendants*

**Adjudication Number: ADJ11866446
Santa Barbara District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration filed by applicant Alan Barlam, in proper. This is our Opinion and Decision After Reconsideration.¹

Applicant seeks reconsideration of the January 27, 2020 Findings of Fact and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant is precluded from receiving a second Return-to-Work Supplement Program (RTWSP) benefit pursuant to Administrative Director (AD) Rule 17302(b).

Applicant contends that his due process rights were violated because Rule 17302(b) was not disclosed to him along with notices he received regarding his eligibility to the RTWSP benefit.

We received an answer from defendant RTWSP. RTWSP contends that the Appeals Board lacks jurisdiction to review the Administrative Director's decision and that per Labor Code² 139.48, the Administrative Director's determination regarding RTWSP eligibility is subject to review only at the trial level of the Workers' Compensation Appeals Board (WCAB).³

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

¹ Commissioner Sweeney, who was on the panel that signed the Opinion and Order Granting Petition for Reconsideration on March 18, 2020, no longer serves on the Board. Another Commissioner has been appointed in her place.

² All statutory references are to the Labor Code unless otherwise noted.

³ 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.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we rescind the January 27, 2020 Findings of Fact and Order and return this matter to the trial level for further proceedings consistent with this Opinion.

FACTS

The facts are undisputed. As the WCJ states:

Applicant sustained at least two industrial injuries resulting in insurance carriers issuing [supplemental job displacement benefit (SJDB)] vouchers on each case.

Applicant received a [SJDV] voucher for a C[umulative] T[rauma] claim with a date of injury of February 15, 2015 through February 23, 2016. This was submitted to the State of California and Applicant received additional monies (\$5,000.00) through the Return to Work Supplemental Program.

Sometime thereafter, Applicant filed for additional monies (\$5,000.00) through the Return-to-Work Supplemental Program. However, this was for an earlier date of injury March 15, 2004 through April 2, 2014; also a CT claim.

The second [RTWSP] voucher was denied by the State of California because additional monies through the Return-To-Work Supplemental Program had already been provided on a date of injury that occurred after the date of injury of the second request for supplemental benefits.

Applicant/Petitioner filed for a hearing and following that trial and an Opinion on Decision denying Applicant's appeal, a petition for reconsideration was filed contesting that determination. (Report, p. 2.)

DISCUSSION

Section 139.48 provides:

(a) There is in the department a return-to-work program administered by the director, funded by one hundred twenty million dollars (\$120,000,000) annually derived from non-General Funds of the Workers' Compensation Administration Revolving Fund, for the purpose of making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. Moneys shall remain available for use by the return-to-work program without respect to the fiscal year.

(b) Eligibility for payments and the amount of payments shall be determined by regulations adopted by the director, based on findings from studies conducted

by the director in consultation with the Commission on Health and Safety and Workers' Compensation. Determinations of the director shall be subject to review at the trial level of the appeals board upon the same grounds as prescribed for petitions for reconsideration.

(c) This section shall apply only to injuries sustained on or after January 1, 2013. (§ 139.48.)

In accordance with section 139.48, the following relevant regulations were adopted:

Rule 17302

(a) To be eligible for the Return-to-Work Supplement, the individual must have received the Supplemental Job Displacement Benefit (SJDB) Voucher for an injury occurring on or after January 1, 2013.

(b) An individual who has received a Return-to-Work Supplement may not receive a second or subsequent Return-to-Work Supplement, except where the individual receives a Voucher for an injury which occurs subsequent to receipt of every previous Return to Work Supplement. (Cal. Code Regs., tit. 8, § 17302.)

Rule 17309

An individual dissatisfied with any final decision of the Director on his or her application for the Return-to-Work Supplement may, file an appeal at the Workers' Compensation Appeals Board (WCAB) District Office. The appeal must contain the name of the individual, the ADJ number of the case in which a voucher was provided, and a clear and concise statement of the facts constituting the basis for the appeal. A copy of the appeal shall be served on the Return-to-Work Program located at 1515 Clay Street, 17th Floor, Oakland, California, 94612. Any appeal must be filed with the WCAB within 20 days of the service of the decision. After an appeal has been timely filed, the Return-to-Work Program may, within the period of fifteen (15) days following the date of filing of that appeal, amend or modify the decision or rescind the decision and take further action. Further action shall be initiated within 30 days from the order of rescission. The time for filing an appeal will run from the filing date of the new, amended or modified decision. Any such appeal will be subject to review at the trial level of the WCAB upon the same grounds as prescribed for petitions for reconsideration. (Cal. Code Regs., tit. 8, § 17309.)

We first examine whether the Appeals Board has jurisdiction to consider applicant's petition. RTWSP contends that section 139.48 limits review of the Director's determinations at the trial level of the WCAB.

Section 139.48 specifically provides that, "Determinations of the director [with respect to RTWSP payments] shall be subject to review at the trial level of the appeals board upon the same

grounds as prescribed for petitions for reconsideration.” WCAB’s trial level workers’ compensation administrative law judges operate under delegated authority from the Appeals Board. (§§ 5309-5310.) The Appeals Board can therefore revoke this delegation of authority at any time in any proceeding and retains full authority to conduct judicial proceedings in the first instance, including the taking of evidence and testimony. (§§ 5309–5310, 5701.) The Appeals Board also retains continuing jurisdiction over all workers’ compensation orders, decisions and awards, which may be rescinded or amended for good cause, granting it the ability to modify final awards to a degree far greater than the ability of a civil court to modify a final judgment. (See §§ 5803–04.)

We note that section 139.48 and Rule 17309 do not prohibit appeals to the Appeals Board. RTWSP’s argument that an appeal stops at the trial level of the WCAB would not only prevent a person from seeking review from the Appeals Board but also from the Court of Appeal and the Supreme Court. Section 5900 specifically provides that any person may seek reconsideration from the Appeals Board of a WCJ’s final order, decision, or award. (§ 5900.) Section 5950 provides that any person may seek a writ of review from the Court of Appeal or the Supreme Court of an order, decision, or award of the Appeals Board. (§ 5950.) In contrast, section 139.48(b) and Rule 17309 are silent as to any remedy after the trial level of the WCAB. Prohibiting review from the Appeals Board will also prohibit review from the Court of Appeal and Supreme Court, which violates the constitutional right to due process. We do not believe that the language in section 139.48 and Rule 17309 create such a draconian limitation. Accordingly, we determine here that applicant’s petition for reconsideration of the WCJ’s denial of a second RTWSP payment is properly before us.

We next explore whether Rule 17302(b) is valid. RTWSP contends that the Appeals Board lacks jurisdiction to invalidate Rule 17302(b) because the authorizing statute, section 139.48, is found in Division 1, not Division 4, of the Labor Code. Section 139.48 authorizes the Director of Industrial Relations to adopt regulations regarding the eligibility and the amount of the RTWSP benefit. (§ 139.48(b).) Whether we have the authority to invalidate Rule 17302(b) is a complicated question because of the statutory interplay between the powers of the RTWSP and the Appeals Board in the administration of the RTWSP program. Nevertheless, we need not answer this question.

The Director’s authority to develop regulations for the eligibility and the amount of the

RTWSP payments is governed by the Administrative Procedures Act (APA) found in Government Code, section 11340 et seq. Government Code, section 11350 provides that, “Any interested person may obtain a judicial declaration as to the validity of any regulation or order of repeal by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure.” In *Dennis v. State of California* (2020) 85 Cal.Comp.Cases 389, 403 [2020 Cal. Wrk. Comp. LEXIS 19] (Appeals Board en banc), we invalidated Rule 10133.54, a regulation promulgated by the Administrative Director of the Division of Workers’ Compensation. Rule 10133.54, unlike Rule 17302(b), was not governed by the APA. (Gov. Code, § 11351(c) [Judicial review as to the validity of a regulation in the Superior Court “shall not apply to the Division of Workers’ Compensation.”].) Here, Rule 17302(b) is subject to judicial review in the Superior Court.

Rule 17302(b) provides that, “An individual who has received a Return-to-Work Supplement may not receive a second or subsequent Return-to Work-Supplement, except where the individual receives a Voucher for an injury which occurs subsequent to receipt of every previous Return to Work Supplement.” (Cal. Code Regs., tit. 8, § 17302.) The question is whether the date of injury of the March 15, 2004 through April 2, 2014 cumulative trauma injury is subsequent to the August 23, 2019 RTWSP payment. “The date of injury in cases of occupational disease or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.” (§ 5412.) The determination of a section 5412 “date of injury” is a two-part analysis, i.e., when did the employee first suffer a compensability disability from a CT injury, and when did the employee know, or in the exercise of reasonable diligence should have known, that the compensable disability was caused by his or her employment. (See *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579].) The record contains no finding as to date of injury of the cumulative trauma.⁴ We are, therefore, unable to determine whether the date of injury

⁴ However, we note that there are medical records in the file dating back to 2017, though they have not been admitted as evidence, which indicate that applicant’s injuries were sustained during the course and scope of his usual and customary employment, suggesting that the date of injury for applicant’s cumulative trauma may be as early as 2017. (Report of Steven N. Brouman, M.D., dated July 12, 2017, p. 22; Report of Amy M. Wickman, M.D., dated March 9, 2017, p. 3; Report of Dr. Wickman, dated June 15, 2017, pp. 2, 3.)

of the cumulative trauma is subsequent to the August 23, 2019 RTWSP payment and return this matter to the trial level to make such a finding.

Applicant contends that his due process rights were violated because Rule 17302(b) was not disclosed to him along with notices he received regarding his eligibility to the RTWSP benefit. However, self-represented litigants are subject to the same legal standards as other litigants. (*Griswold v. Department of Alcoholic Beverage Control* (1956) 141 Cal.App.2d 807, 810 [“Appellants elected to appear in propria persona. By so appearing they were not entitled to any special privileges.”]; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 [“Under the law, a party may choose to act as his or her own attorney. [citations omitted] ‘[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]’”]) In this case, applicant is subject to the same standards as an attorney, even though he is acting in pro per. As such, failure to know the rules governing this issue is not a violation of due process.

Accordingly, for the reasons set forth above, we rescind the January 27, 2020 Findings of Fact and Order and return this matter to the trial level for further proceedings consistent with this Opinion.

For the foregoing reasons,

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that applicant Alan Barlam's Petition for Reconsideration of the January 27, 2020 Findings of Fact and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 27, 2025

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

**ALAN BARLAM
OFFICE OF THE DIRECTOR – LEGAL**

LSM/pm

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