

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

**AMELIA MINA, *Applicant***

**vs.**

**NMA INSPECTIONS, insured by HARTFORD ACCIDENT AND INDEMNITY CO.;  
DEPARTMENT OF INDUSTRIAL RELATIONS, RETURN-TO-WORK SUPPLEMENT  
PROGRAM, *Defendants***

**Adjudication Number: ADJ13342468  
San Francisco 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 Amelia Mina. This is our Opinion and Decision After Reconsideration.<sup>1</sup>

Applicant seeks reconsideration of the October 3, 2022 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant is not entitled to a second Return-to-Work Supplement Program (RTWSP) benefit pursuant to Rule 17302(b) (Cal. Code of Regs., tit. 8, § 17302, subd. (b).).

Applicant seeks to invalidate Rule 17302(b) because she contends that it is inconsistent with its authorizing statute and violates the Equal Protection Clause of the Fourteenth Amendment and Article 1, section 7, of the California Constitution, and constitutes invalid special legislation in violation of Article IV, section 16, of the California Constitution.

We received an answer from the Director of Industrial Relations as Administrator of the RTWSP. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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<sup>1</sup> Commissioner Sweeney, who was on the panel that signed the Opinion and Order Granting Petition for Reconsideration on December 22, 2022, no longer serves on the Board. Another Commissioner has been appointed in her place.

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 affirm the October 3, 2022 Findings and Order.

## I.

As the WCJ states in his Report:

### 1. Procedural background.

Applicant suffered an industrial injury in 2020 and resolved the resulting claim via Compromise and Release (C&R) the following year. Among other compensation, she received a Labor Code section 4658.7 Supplemental Job Displacement Benefit (SJDB). She then applied for payment from the RTWSP, was deemed ineligible, and filed a timely appeal of that determination with the Appeals Board.

### 2. Evidence at trial and decision.

The parties stipulated to a timeline of the relevant history, which was consistent with the seven admitted exhibits. As set forth on page 2 of the Opinion on Decision, there are two industrial claims pertinent to this dispute. In 2018, applicant suffered an alleged injury and filed an application that was assigned Case No. ADJ13342469. The case was settled via C&R on September 15, 2021, and a week later, she was issued an SJDB voucher by that employer. On November 17, 2021, applicant received a \$5,000 payment from the RTWSP in connection with the 2018 claim.

In the meanwhile, applicant filed the application in the instant case, where the admitted date of injury is January 27, 2020, and settled it by C&R, which was approved on November 2, 2021. She was furnished with another SJDB by the 2020 claim administrator on November 17, 2021. On November 24, she submitted a second request for payment from the RTWSP, which was denied on January 20, 2022, giving rise to this litigation. On February 7, apparently acting in pro. per., applicant filed an appeal, asserting as follows, in relevant part: “Since both injury claims involved different body parts and different employers, I believe that I am entitled to a second Return-to-Work Supplement, which was part of the settlement negotiations.”

Based on this record, after applying the plain language of Reg. 17302(b), I found that applicant’s later injury herein occurred before she received payment from the RTWSP in ADJ13342469. Consequently, I upheld the Director’s determination of ineligibility and denied applicant’s appeal.

### 3. Contentions on reconsideration.

On reconsideration, as she did at trial, applicant asserts that Reg. 17302(b) should be invalidated by the Appeals Board on multiple grounds: as inconsistent

with the enabling statute, as unconstitutional, and as contrary to Labor Code section 3202. (Report, pp. 1-3.)

## II.

Labor code,<sup>2</sup> 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

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<sup>2</sup> All statutory references are to the Labor Code unless otherwise indicated.

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.)

Applicant erroneously contends that the authorizing statute of Rule 17302(b) is section 4658.7. Section 4658.7 establishes eligibility for the Supplemental Job Displacement Benefit Program (SJDB). (§ 4658.7.) The SJDB Program is a separate and distinct program than the RTWSP. The authorizing statute for the RTWSP is section 139.48, which states that “[e]ligibility for payments and the amount of payments shall be determined by regulations adopted by the director [of industrial relations].” (§ 139.48.) Applicant contends that Rule 17302(b) should be invalidated on various grounds.

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 Workers’ Compensation Appeals Board (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 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. That is, applicant's remedy in her quest to invalidate Rule 17302(b) lies with the Superior

Court. Accordingly, we affirm the October 3, 2022 Findings and Order.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 3, 2022 Findings and Order is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**May 23, 2025**

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

**AMELIA MINA  
SAN FRANCISCO BAY AREA LAW  
DIR – OFFICE OF THE DIRECTOR – LEGAL UNIT (OAKLAND)**

**LSM/pm**

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