

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

**DEXTER HAYNES, *Applicant***

**vs.**

**TRANSFORCE, INC.; RETURN-TO-WORK SUPPLEMENT PROGRAM (real party in  
interest), *Defendants***

**Adjudication Number: ADJ16283940  
Marina del Rey 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 Dexter Haynes. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the November 27, 2024 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant is not entitled to a second Return-to-Work Supplement (RTWS) payment pursuant to Rule 17302(b) (Cal. Code Regs., tit. 8, § 17302(b).)

Applicant contends that (1) Rule 17302(b) should be struck down because it is inconsistent with Labor Code,<sup>1</sup> section 139.48, the enabling statute; (2) the Appeals Board should issue an en banc decision on the issue of the validity of Rule 17302(b); and (3) section 139.48 and Rule 17302(b) are unconstitutional because the Legislature improperly delegated authority to the Director of the Department of Industrial Relations to determine the eligibility of the RTWS program.

We received an answer from the Director of the Department of Industrial Relations as administrator of the Return-to-Work Supplement Program (hereinafter RTWSP). It contends that (1) Rule 17302(b) was promulgated pursuant to statutory authority and is presumptively valid; and (2) the Appeals Boards lacks the jurisdiction to invalidate Rule 17302(b).

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<sup>1</sup> All statutory references are to the Labor Code unless otherwise indicated.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted to address whether Rule 17302(b) is authorized by and consistent with section 139.48.

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 November 27, 2024 Findings and Order.

## FACTS

The facts are undisputed in this matter. As the WCJ states:

Applicant, Dexter Haynes, sustained injury arising out of and in the course of employment to the right leg, ankle and foot while working for Transforce, Inc. on 05/26/2022 (MOH/SOE, p.2, lines 4-6). This matter settled by way of Compromise & Release (C&R) by Order Approving (OACR) issued on 06/19/2023 (Petition for Reconsideration. p.3, lines 19-20). As part of the C&R Applicant received a Supplemental Job Displacement Voucher (SJDV) on approximately 07/06/2023 (Id., p.4 lines 1-4). Based thereon, Applicant applied for a Return To-Work Supplement (RTWS) of \$5,000.00 from the Return-To-Work Supplement Program (RTWSP) and this application was denied on 07/18/2023 (Petition for Reconsideration, p.4, lines 5-7). Thereafter, Applicant filed a Petition Appealing Denial of Return-to-Work Supplement on 08/01/2023 (Joint Exhibit 104).

Based on the Trial Briefs submitted by the parties, the basis of this denial of eligibility for a second RTWS was CCR section 17302(b) which states: “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.” Applicant’s 05/26/2022 injury claim herein against Transforce, Inc. occurred prior to Applicant’s 08/15/2022 receipt of a RTWS issued in a previous case, *D. Haynes v. J.B. Hunt*, case number ADJ14202486. (Petition for Reconsideration p.3, lines 10-11).

This matter proceeded to Trial on 10/16/2024 and was submitted for decision that same day after brief testimony from the Applicant that he expected to receive a second \$5,000.00 RTWS (MOH/SOE, 10/16/2024). The Decision and Findings & Order issued 11/27/2024. Per EAMS filenet, although dated 12/13/2024 Applicant’s Petition for Reconsideration is listed as received on 12/12/2024 with a “Doc Entry Date” of 12/13/2024. In order to avoid any time deadline issues this court will presume that the filing date

of the Petition for Reconsideration with the court is the earlier date. . . .  
(Report, pp. 2-3.)

## **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.)

Rules 17302(b) and 17309 provide:

### 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.)

RTWSP contends that the Appeals Board lacks jurisdiction to invalidate Rule 17302(b) because the authorizing statutes, sections 55 and 139.48, are found in Division 1, not Division 4, of the Labor Code. Section 139.48 authorizes the Director to adopt regulations regarding the eligibility and the amount of the RTWS benefit. (§ 139.48(b).) In *Dennis v. State of California* (2020) 85 Cal.Comp.Cases 389, 403 [2020 Cal. Wrk. Comp. LEXIS 19] (Appeals Board en banc), we stated that the Appeals Board has exclusive jurisdiction to adjudicate workers' compensation claims. RTWSP, however, argues that the RTWS benefit is not a workers' compensation benefit. We note that the RTWS program is funded by the Workers' Compensation Administration Revolving Fund, which funds workers' compensation programs. (§ 62.5(a).) We also note that the RTWS was established "for the purpose of making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss." In other words, the RTWS program's purpose is to supplement workers' compensation benefits.

Furthermore, section 139.48 specifically provides that, "Determinations of the director [with respect to RTWS payments] shall be subject to review at the trial level of the appeals board upon the same grounds as prescribed for petitions for reconsideration." A WCJ at the trial level operates 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.) Section 139.48, thus, gives jurisdiction to the Appeals Board to review the RTWSP's determination with respect to RTWS payments.

Accordingly, we determine here that applicant's petition for reconsideration of the WCJ's denial of a second RTWS payment is properly before us. However, it is undisputed, and applicant admits, that based on Rule 17302(b), applicant is not entitled to a second RTWS payment. (Petition, pp. 6:23-7:3.) Applicant, instead, asks us to invalidate Rule 17302(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 RTWS program. Nevertheless, we need not answer this question. The Director's authority to develop regulations for the eligibility and amount of the RTWS 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." That is, applicant's remedy in his quest to invalidate Rule 17302(b) lies with the Superior Court.

In *Dennis, supra*, 85 Cal.Comp.Cases 389, 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.

Therefore, although we sympathize with applicant's predicament as to the timing of his RTWSP payment, we refrain from invalidating Rule 17302(b) and encourage applicant to seek judicial review at the Superior Court.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 27, 2024 Findings and Order is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



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

**May 22, 2025**

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

**DEXTER HAYNES  
LAW OFFICES OF FRED L. FONG, APC  
DIR – 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. o.o*