

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

**ELIDETH BALDERRAMA RAMIREZ, *Applicant***

**vs.**

**HOTCAKES NO 6 INC IHOP 817; PREFERRED EMPLOYERS SAN DIEGO,  
*Defendants***

**Adjudication Number: ADJ11298015  
San Diego 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 Elideth Balderrama Ramirez. This is our Opinion and Decision After Reconsideration.<sup>1</sup>

Applicant seeks reconsideration of the February 15, 2022 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant is precluded from receiving a second \$5,000.00 Return-to-Work Supplement Program (RTWSP) benefit.

Applicant contends that she is entitled to a second RTWSP benefit because she received a second Supplemental Job Displacement Benefit (SJDB) voucher after she received her first RTWSP benefit.

We have not received an answer from RTWSP. 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, the Answer and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we

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<sup>1</sup> Deputy Commissioner Schmitz, who was on the panel that signed the Opinion and Order Granting Petition for Reconsideration on April 11, 2022, is not available to participate in this Opinion. Another Commissioner has been appointed in her place.

rescind the February 15, 2022 Findings and Order and return this matter to the trial level for further proceedings.

## **FACTS**

The facts are not in dispute. (Report, p. 2.) In fact, both applicant and RTWSP recited identical facts in their trial briefs:

On January 17, 2018, the applicant Elideth Balderrama Ramirez (applicant) sustained a specific back injury while working for Hotcakes No. 6, Inc./IHOP (IHOP). This case is ADJ11297995.

From April 20, 2017 to April 20, 2018, the applicant sustained a cumulative trauma back injury while working for IHOP. This is case ADJ11298015.

On March 12, 2020, the claims administrator for the insured employer issued a Supplemental Job Displacement Benefit voucher (SJDB) to the applicant for the specific date of injury of January 17, 2018. (RTWSP Exhibit 1.)

On November 30, 2020, applicant applied for a onetime benefit with RTWSP based on the voucher issued for the injury on January 17, 2018. RTWSP assigned the case number RTW1101146 for this request. (RTWSP Exhibit 2.)

On January 15, 2021, RTWSP issued applicant a onetime benefit for \$5,000.00 for the injury on January 17, 2018, Case No. RTW1101146. (RTWSP Exhibit 3.)

On February 25, 2021, the claims administrator for the insured employer issued a SJDB voucher to the applicant for the cumulative injury ending on April 20, 2018. (RTWSP Exhibit 4.)

On March 26, 2021, applicant re-applied for a onetime benefit with the RTWSP based on the voucher issued for the cumulative injury with the end date of April 20, 2018. RTWSP assigned the case number of RTW1108239 for this second request. (RTWSP Exhibit 5.)

On March 30, 2021, the RTWSP denied her request for a second \$5,000 benefit for the cumulative injury that ends on April 20, 2018, Case No. RTW1108239. RTWSP denied the request because, on January 15, 2021, applicant had received a voucher in case RTW1101146 based on the specific January 17, 2018 injury. (RTWSP Exhibit 6.)

On April 6, 2021, applicant appealed the denial of her request for a benefit based on the voucher issued for the cumulative injury that ended on April 20, 2018 in Case No. RTW1108239.

(RTWSP Trial Brief dated January 3, 2022, pp. 1:21-2:18; Applicant's Trial Brief dated February 10, 2022, pp. 2:1-3:3.)

## **DISCUSSION**

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

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

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.)

Applicant contends that the voucher she received on February 25, 2021 in connection with her April 20, 2017 through April 20, 2018 cumulative trauma injury is subsequent to the January 15, 2021 RTWSP payment she received in connection with her January 17, 2018 injury, and she therefore meets the exception in Rule 17302(b). The exception in Rule 17302(b) applies “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 term “subsequent to receipt of every previous Return to Work Supplement” modifies the word “injury” not the word “Voucher.” In other words, the exception applies where the *injury* occurs subsequent to receipt of every Return to Work Supplement. Here, the question is whether the date of injury of the cumulative trauma injury is subsequent to the January 15, 2021 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.<sup>3</sup> We are, therefore, unable to determine whether the date of injury of the cumulative trauma is subsequent to the January 15, 2021 RTWSP payment and return this matter to the trial level to make such a finding.

Although applicant has not raised the issue of the validity of Rule 17302(b), we proactively decline to address this issue. 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).) 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, any quest to invalidate Rule 17302(b) lies with the Superior Court.

Accordingly, for the reasons set forth above, we rescind the February 15, 2022 Findings and Order and return this matter to the trial level for further proceedings consistent with this Opinion.

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<sup>3</sup> However, we note that there is a Qualified Medical Evaluation report dated July 23, 2019, although not admitted into evidence, indicating that applicant's cumulative trauma injury from April 20, 2017 to April 20, 2018 arose out of and in the course of employment, suggesting that the date of injury for applicant's cumulative trauma may be as early as April 20, 2018. (Report of Neil J. Halbridge, M.D. dated July 23, 2019, p. 7.)

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that applicant Elideth Balderrama Ramirez's Petition for Reconsideration of the February 15, 2022 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ PAUL F. KELLY, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, 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.**

**ELIDETH BALDERRAMA RAMIREZ  
ZUCKERMAN & WAX  
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.  
KL