

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

JORGE ARAGON, *Applicant*

vs.

**EL SUPER, insured by SAFETY NATIONAL CASUALTY CORPORATION,
administered by TRISTAR RISK MANAGEMENT, *Defendants***

**Adjudication Number: ADJ11110973
Los Angeles 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 Jorge Aragon. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the August 15, 2023 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant is not entitled to an additional payment from the Return-to-Work Supplement Program (RTWSP) because applicant received an earlier RTWSP in connection with a prior injury after the date of the instant injury from which applicant is claiming RTWSP benefits. Rule 17302(b) prohibits a second or subsequent RTWSP payment "except where the individual receives a [Supplemental Job Displacement Benefit (SJDB)] Voucher for an injury which occurs subsequent to receipt of every previous Return to Work Supplement." (Cal. Code Regs., tit. 8, § 17302(b).)

Applicant concedes that under Rule 17302(b), he is not eligible for a second RTWSP payment.¹ However, applicant contends that (1) Rule 17302(b) is an invalid regulation, which conflicts with, and is not authorized by Labor Code,² section 139.48; and that (2) Rule 17302(b) is arbitrary, capricious, does not effectuate the purpose of the statute, and is contrary to section 3202 and the constitutional mandate of Article XIV, section 4.

¹ We note that the record does not contain a finding of the date of injury for the cumulative trauma period from June 30, 2014 through October 28, 2015 at issue. (Lab. Code, § 5412.)

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

We received an answer from RTWSP. RTWSP contends that the Appeals Board lacks jurisdiction to consider applicant's petition and that the Director of Industrial Relations has the authority to determine eligibility for the RTWSP in accordance with section 139.48.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied unless the Appeals Board finds it appropriate to examine the validity of Rule 17302(b).

We have reviewed the allegations in the Petition for Reconsideration and the Answer, and the contents of the Report. For the reasons discussed below, we affirm the August 15, 2023 Findings and Order.

I.

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

Procedural Background.

The facts in this matter are undisputed.

Applicant alleged a cumulative trauma industrial injury for the period of 6/30/2014 through 10/28/2015 which resolved via Compromise and Release and was Ordered Approved on 3/18/2021. Among other compensation, Applicant received a Labor Code section 4658.7 Supplemental Job Displacement Benefit (SJDB) which issued by Defendant on 8/10/2021. Applicant then applied for payment from the RTWSP, was deemed ineligible pursuant to Rule 17302(b), and filed a timely appeal of that determination with the Appeals Board.

Evidence at Trial and Decision

The parties stipulated to a timeline of the relevant history, which was consistent with the four admitted exhibits.

As set forth on page 2 of the Opinion on Decision, there are two industrial claims pertinent to this dispute. In 2014, applicant suffered an alleged injury and filed an application that was assigned Case No. ADJ9498967. Such case was settled via C&R on July 10, 2017, and a week later, Applicant was issued an SJDB voucher by that employer. Shortly thereafter Applicant received a \$5,000 payment from the RTWSP in connection with the 2014 claim.

In the meanwhile, Applicant filed the Application in the instant case, where the cumulative trauma date of injury ends October 28, 2015, and settled it by C&R, which was Ordered Approved on March 18, 2021. Applicant was furnished with another SJDB by the 2015 claims administrator on August 10, 2021. Applicant thereafter submitted a second request for payment from the RTWSP, which was denied on April 1, 2022, giving rise to this litigation. On April 22, 2022 Applicant filed a Declaration of Readiness to Proceed asserting as follows, in relevant part: "Appeal of AD refusal to issue second RTWSP payment."

Based on this record, after applying the plain language of Reg. 17302(b), the [WCJ] found that Applicant's later injury herein occurred before she received payment from the RTWSP in ADJ9498967. Consequently, [the WCJ] upheld the Director's determination of ineligibility and denied applicant's appeal. (Report, pp. 2-3.)

II.

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 regulations were adopted:

Rule 17300

(a) This article governs the return-to-work program established by Labor Code section 139.48. This program shall be called the Return-to-Work Supplement Program. The Return-to-Work Supplement Program is located at 1515 Clay Street, 17th Floor, Oakland, California, 94612.

(b) This program is intended to provide supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. This program is based on findings of studies done by RAND concerning permanent disability and in particular the study entitled Identifying Permanently Disabled Workers with Disproportionate Earnings Losses for Supplemental Payments, RAND, February 2014. <http://www.dir.ca.gov/chswc/Reports/2014/Earnings.Losses.2014.pdf>. (Cal. Code Regs., tit. 8, § 17300.)

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 17303

Commencing 30 days after the effective date of these regulations, and continuing until the Administrative Director of the Division of Workers' Compensation amends Form DWC-AD 10133.32 to include notice of the Return-to-Work Supplement application process, all Vouchers issued shall be accompanied by a cover sheet, prepared by the claims administrator, containing the following notice: "Because you have received this Voucher and are unable to return to your usual employment you may be eligible for a Return-to-Work Supplement. You must apply within one year from the date this Voucher was served on you. You should make a copy of the Voucher which you will need to apply for the Return-to-Work Supplement. Details about the Return-to-Work supplement program are available from the Department of Industrial Relations on its web site, www.dir.ca.gov, or by calling 510-286-0787." The Director will arrange for publication on the Department web site of a notice targeted at eligible persons who received vouchers before the notice was included with the voucher. (Cal. Code Regs., tit. 8, § 17303.)

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 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 his quest to invalidate Rule 17302(b) lies with the Superior Court.

Therefore, while we sympathize with applicant's predicament as to the timing of his RTWSP payments, for the reasons set forth above, we affirm the August 15, 2023 Findings and Order.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 15, 2023 Findings and Order is **AFFIRMED**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



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.

**JORGE ARAGON
LAW OFFICES OF MOISES VAZQUEZ
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.
CS