

1 Supplemental Job Displacement Benefits voucher. Under the facts presented herein, the parties have
2 established that a good faith dispute exists. Accordingly, we will grant defendant's petition and issue an
3 order approving the parties' Compromise and Release Agreement that includes the settlement of the
4 Supplemental Job Displacement Benefit voucher.

5 I.

6 Applicant Juan Pablo Beltran filed an Application for Adjudication of Claim on November 17,
7 2014, alleging he sustained an industrial cumulative trauma injury to his head and back due to repetitive
8 heavy work over the period October 20, 2013 to October 20, 2014, while employed as a laborer by
9 Structural Steel Fabricators. Defendant denied applicant's claim based upon the affirmative defense that
10 applicant did not report the injury prior to his termination for cause.

11 On March 22, 2016, the parties submitted a walk through Compromise and Release Agreement
12 settling applicant's claim for \$12,500.00, which included his potential entitlement to a Supplemental Job
13 Displacement Benefit voucher. The agreement included an addendum indicating applicant was not
14 entitled to a Supplemental Job Displacement Benefit voucher and further incorporated the additional
15 comments:

16 State Fund contends that applicant suffered no injuries as a result of his
17 employment with Structural Steel. Applicant failed to report any injury
18 prior to termination. Applicant began work shortly after termination for
another employer, therefore no periods of temporary disability were
suffered.

19 . . . Applicant disputes such allegations and states he did report his injuries
20 before being terminated.

21 Upon receipt of the Compromise and Release Agreement, the WCJ suspended action on the
22 settlement agreement and set the matter for trial, noting on March 24, 2016, that the parties may not settle
23 or commute the Supplemental Job Displacement Benefit voucher. The WCJ then reset the matter for a
24 status conference after defendant filed a Petition for Removal.

25 According to the WCJ's Report and Recommendation on Petition for Reconsideration, the WCJ
26 requested defendant strike the language that applicant was not entitled to a Supplemental Job
27 Displacement Benefit voucher. When defendant would not agree, the WCJ approved the Compromise

1 and Release Agreement with the additional language, "Parties may not settle or commute SJDV per LC
2 §4658.7(g) CCR§10133.31 (h)"

3 II.

4 In 2012, the Legislature passed SB863 which, *inter alia*, amended the provisions of workers'
5 compensation law pertaining to Supplemental Job Displacement Benefits, which replaced vocational
6 rehabilitation benefits that were terminated in 2004. Between 2004 and 2012, injured workers were
7 entitled to a voucher to help pay for educational retraining or skill enhancement, or both, at state-
8 approved or state-accredited schools, in amounts up to \$10,000.00, depending on the level of permanent
9 disability. (Labor Code section 4658.5.)

10 SB863 added Labor Code section 4658.7, effective for injuries occurring on or after January 1,
11 2013, to provide that an injured employee who has sustained permanent partial disability would be
12 entitled to a Supplemental Job Displacement Benefit voucher unless the employer made an offer of
13 regular, modified, or alternative work that met certain specified criteria:

14 If the injury causes permanent partial disability, the injured employee shall
15 be entitled to a supplemental job displacement benefit as provided in this
16 section unless the employer makes an offer of regular, modified, or
17 alternative work . . .

17 The benefit would be in the form of a voucher redeemable up to \$6,000.00, to pay for a range of
18 vocational expenses at the injured employee's option.¹

19
20 ¹ Labor Code section 4658.7(d) and (e) provide:

21 (d) The supplemental job displacement benefit shall be in the form of a voucher redeemable as provided
22 in this section up to an aggregate of six thousand dollars (\$6,000).

23 (e) The voucher may be applied to any of the following expenses at the choice of the injured employee:

24 (1) Payment for education-related retraining or skill enhancement, or both, at a California public school
25 or with a provider that is certified and on the state's Eligible Training Provider List (EPTL), as
26 authorized by the federal Workforce Investment Act (P.L. 105-220), including payment of tuition, fees,
27 books, and other expenses required by the school for retraining or skill enhancement.

(2) Payment for occupational licensing or professional certification fees, related examination fees, and
examination preparation course fees.

(3) Payment for the services of licensed placement agencies, vocational or return-to-work counseling,
and résumé preparation, all up to a combined limit of 10 percent of the amount of the voucher.

(4) Purchase of tools required by a training or educational program in which the employee is enrolled.

1 According to an August 31, 2012 analysis by the Assembly Committee on Insurance, the change
2 in the voucher program was motivated by a desire to improve the retraining of injured workers, noting
3 that “this program has never worked well because the trigger for the benefit occurs far too late for the
4 benefit to work well. This bill attempts to reform the SJDB to make its promise of retraining viable.”

5 The analysis by the Senate Rules Committee stated:

6 Return to work after an injury is crucial to an injured worker's long term
7 financial and emotional health. California, unfortunately does a poor job of
8 returning its injured workers to work. In 2004, SB 899 adopted a
9 supplemental job displacement benefit designed to provide retraining
10 services for injured workers who could not return to their existing job.
11 However, this program has never worked well because the trigger for the
12 benefit occurs far too late for the benefit to work well. This bill attempts to
13 reform the SJDB to make its promise of retraining viable.

14 Also added by SB863 was a provision prohibiting the settlement or commutation of a claim for
15 the Supplemental Job Displacement Benefit voucher:

16 (g) Settlement or commutation of a claim for the supplemental job
17 displacement benefit shall not be permitted under Chapter 2 (commencing
18 with Section 5000) or Chapter 3 (commencing with Section 5100) of Part
19 3.²

20 According to the Assembly Floor Analysis, the prohibition on settlement of the Supplemental Job
21 Displacement Benefit voucher was to prevent the “cashing out” of the retraining voucher.

22 III.

23 Defendant argues that where there is a good faith dispute as to the compensability of a claim of
24 injury, the parties should be permitted to settle applicant's entitlement to the Supplemental Job
25 Displacement Benefit voucher, analogizing to the situation which existed with respect to the settlement
26 of vocational rehabilitation benefits that was addressed in *Thomas v. Sports Chalet* (1977) 42

27 (5) Purchase of computer equipment, up to one thousand dollars (\$1,000).

(6) Up to five hundred dollars (\$500) as a miscellaneous expense reimbursement or advance, payable upon request and without need for itemized documentation or accounting. The employee shall not be entitled to any other voucher payment for transportation, travel expenses, telephone or Internet access, clothing or uniforms, or incidental expenses.

² Chapters 2 and 3 of Part 3 of the Labor Code pertain to Compromise and Release Agreements and commutation of workers' compensation benefits.

1 Cal.Comp.Cases 625 [Appeals Board En Banc]. In *Thomas*, the parties agreed to settle their case by way
2 of compromise and release, and part of the agreement contained provisions that vocational rehabilitation
3 rights were settled.

4 Similar to the prohibition on settling the Supplemental Job Displacement Benefit voucher in
5 Labor Code section 4658.7(g), Labor Code section 5100.6 prohibited the commutation or settlement of
6 vocational rehabilitation benefits to which an injured worker was then entitled. Labor Code section
7 5100.6, operative January 15, 1966, provided:

8 Notwithstanding the provisions of Section 5100, the appeals board shall
9 not permit the commutation or settlement of compensation indemnity
10 payments or other benefits to which the employee is entitled under
11 rehabilitation.

12 The implication of this language became apparent when the previously voluntary vocational
13 rehabilitation program was amended in 1974, to provide that injured workers were entitled to vocational
14 rehabilitation as a matter of right. The Appeals Board in *Thomas* was then “faced with the problem of
15 whether it can permit a compromise and release of the [vocational rehabilitation] benefits which may be
16 due an employee under the provisions of Section 139.5.” (*Thomas*, 42 Cal.Comp.Cases at 628.)

17 In concluding that the statutory prohibition against the settlement of vocational rehabilitation
18 benefits did not preclude the approval of a Compromise and Release Agreement that provided for a
19 complete release of vocational rehabilitation benefits, the Appeals Board relied upon the policy favoring
20 settlement of disputed cases. Noting that an injured workers’ entitlement to vocational rehabilitation
21 benefits only exists where an employer’s liability to provide the benefit is not in dispute, the Board
22 conditioned approval of the settlement of vocational rehabilitation benefits on the existence of legitimate
23 doubts over an employer’s liability for any benefit.

24 The Board is likewise concerned that if a complete release cannot be
25 executed the parties will be unable to settle those cases where there is a
26 genuine doubt or question as to the validity of the claim which if resolved
27 against the applicant would result in a denial of all benefits. Considering
that the State Study Commission continually referred to injured workers
and Section 5100.6 refers to settlement of benefits ‘to which the employee
is entitled under rehabilitation,’ the Board does not find it necessary to
interpret Section 5100.6 to prohibit complete settlement in this type of
case. To hold otherwise would put the Board in the position of requiring a
determination in every case that the employee is or is not entitled to

1 benefits, thereby effectively doing away with settlements in those cases
2 where legitimate and serious issues, which would totally bar recovery if
successfully proved by the defense, exist.

3 The Board considers of the utmost importance, however, that before a
4 complete release is approved, the trier of fact thoroughly review the record
5 to determine whether a serious and good faith issue exists to justify such a
6 release. In the absence thereof, no compromise and release agreement
7 approved by the Board will relieve the employer from liability for
rehabilitation benefits. Accordingly, where such an issue genuinely exists
8 and the right to rehabilitation is to be foreclosed, the trier of fact must make
an express finding to this effect and must fully discuss the reasons for so
finding. In this situation, the effect of such finding will be to foreclose the
right to rehabilitation.

(*Thomas*, 42 Cal.Comp.Cases at 633.)

9 The prohibition against settlement of the Supplemental Job Displacement Benefit voucher is
10 analogous to the prohibition against settlement of vocational rehabilitation benefits, which *Thomas* held
11 could be resolved in a Compromise and Release Agreement only when a serious and good faith issue
12 exists, which if resolved against the applicant would defeat all right to compensation.

13 Here, an injured worker's entitlement to the Supplemental Job Displacement Benefit voucher is
14 conditioned upon both the acceptance of liability for a claimed industrial injury by the employer and the
15 existence of permanent partial disability, or a determination of these issues after trial. Where an employer
16 denies liability and raises an affirmative defense that could potentially defeat all right to compensation, a
17 prohibition on settlement of the Supplemental Job Displacement Benefit voucher would require a trial to
18 determine injury and the existence of permanent partial disability in every case. The Board in *Thomas*
19 recognized that this would result in "effectively doing away with settlements," despite the existence of
20 good faith disputes that could totally bar recovery.

21 Accordingly, we hold that, as in *Thomas*, where the trier of fact makes an express finding based
22 upon the record that a serious and good faith issue exists to justify a release, a compromise and release
23 agreement may be approved by the Board which will relieve the employer from liability for the
24 Supplemental Job Displacement Benefit voucher.

25 The parties' Compromise and Release Agreement herein set forth the basis for an express finding
26 that a serious and good faith issue exists that would justify the release of the Supplemental Job
27 Displacement Benefit voucher. In their addendum to the Compromise and Release Agreement, defendant

1 cited its affirmative defense under Labor Code section 3600(a)(10), that applicant did not give notice of
2 his injury, and did not file his claim, until after his employment was terminated for cause, while applicant
3 contended that he did give notice prior to his termination. This affirmative defense, if so found by a trier
4 of fact, would bar applicant's recovery of all workers' compensation benefits.

5 The WCJ, in her Report and Recommendation on Petition for Reconsideration, notes that the
6 Administrative Director's Rules promulgated to implement the Supplemental Job Displacement Benefit
7 voucher created an alternative dispute resolution procedure that permits the Administrative Director to
8 resolve disputes over the benefit, which obviates the need for dispute resolution by a WCJ. These
9 disputes however would not extend to consideration of whether there is a good faith issue to justify the
10 release of benefits, as the Administrative Director is not authorized to approve the parties' Compromise
11 and Release Agreement.

12 Our review of the record demonstrates the existence of such a good faith dispute over applicant's
13 entitlement to the Supplemental Job Displacement Benefit voucher, such that the parties' settlement of
14 that benefit should be approved. Accordingly, we will grant defendant's Petition for Reconsideration and
15 issue an Order approving the parties' Compromise and Release Agreement as presented.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that the June 7, 2016 Petition for Reconsideration be, and hereby is,
3 **GRANTED**, and as our Decision After Reconsideration, the May 17, 2016 Order Approving
4 Compromise and Release is **AMENDED** as follows:

5 The parties have filed a Compromise and Release in the above-entitled
6 action together with the entire medical record, which is admitted into
7 evidence and have waived the provisions of Labor Code § 5313. For the
8 reasons set forth in the Compromise and Release and based upon an
9 evaluation of the entire record, the settlement appears adequate and should
10 be approved.

11 The parties wish to release the applicant's dependents' rights to
12 death benefits and the Appeals Board has considered the same in
13 determining the adequacy of the Compromise and Release. (*Sumner*
14 *v. WCAB*, 48 CCC 369.)

15 A good faith dispute exists as to injury AOE/COE and/or liability
16 for injury to one or more body parts which could, if resolved
17 against the applicant, defeat the applicant's right to recover
18 benefits.

19 Now therefore, **IT IS ORDERED** that said Compromise and Release is
20 approved.

21 **AWARD** is made in favor of **JUAN PABLO BELTRAN** and against
22 defendant **STATE COMPENSATION INSURANCE FUND** in the sum
23 of \$12,500.00, less reasonable attorney fee of \$1,875.00.

24 Attorney fees are to be withheld by the defendant and released upon
25 receipt of a written agreement of current and prior attorneys without further
26 order of the Appeals Board.

27 Leaving a balance of \$10,625.00.

**THE BOARD RETAINS JURISDICTION OVER ALL UNPAID
LIENS FILED TO DATE.**

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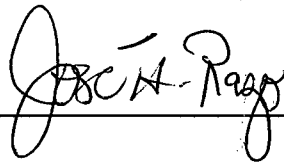
1 It is further understood and agreed that the aforesaid sum includes interest
2 as provided by law for a period of 30 days from the date of service by the
3 Workers' Compensation Appeals Board of the Order Approving
4 Compromise and Release.

5 **WORKERS' COMPENSATION APPEALS BOARD**

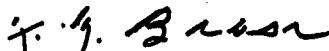
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8 DEIDRA E. LOWE

9 **I CONCUR,**

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13 **JOSÉ H. RAZO**

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16 **FRANK M. BRASS**



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

19
20 **AUG 03 2016**

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

23 **JUAN PABLO BELTRAN**
24 **LAW OFFICE OF GORDON C. STRANGE**
25 **STATE COMPENSATION INSURANCE FUND**
26 **LEGACY PRO LAW**
27 **UNIVERSAL DIAGNOSTIC IMAGING**
LIEN RECOVERY GROUP



SV/pc