

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **ANTHONY DENNIS,**

5 *Applicant,*

6 **vs.**

7 **STATE OF CALIFORNIA – DEPARTMENT**  
8 **OF CORRECTIONS INMATE CLAIMS;**  
9 **STATE COMPENSATION INSURANCE**  
10 **FUND,**

11 *Defendants.*

**Case No. ADJ9346293**  
**(Sacramento District Office)**

**OPINION AND DECISION**  
**AFTER RECONSIDERATION**

12 We previously granted reconsideration to provide an opportunity to further study the legal and  
13 factual issues raised by the Petition for Reconsideration filed by applicant Anthony Dennis. This is our  
14 Opinion and Decision After Reconsideration.

15 Applicant seeks reconsideration of the Findings and Award issued by the workers' compensation  
16 administrative law judge (WCJ) on May 9, 2018. The WCJ found, in pertinent part, that (1) applicant's  
17 appeal of the Administrative Director's decision is untimely, and (2) applicant is not entitled to  
18 supplemental job displacement benefits (SJDB).

19 Applicant contends that he meets the criteria for SJDB, and that Rule 10133.54(g) regarding the  
20 timeliness to appeal the decision of the Administrative Director is ambiguous and should not bar him  
21 from bringing this action before the Workers' Compensation Appeals Board because it violates his due  
22 process rights.

23 We received an Answer from defendant. Defendant contends that applicant is not entitled to  
24 SJDB and that the only method to appeal the decision of the Administrative Director is to comply with  
25 the timeframes in Rule 10133.54.

26 We received a Report and Recommendation on Petition for Reconsideration (Report) from the  
27 WCJ recommending that the Petition be denied.

1 We have considered the allegations of the Petition, Answer, and the contents of the WCJ's  
2 Report. Based on our review of the record and, as discussed below, we grant reconsideration, rescind the  
3 Findings and Award, and substitute it with a new Finding that applicant is entitled to SJDB.

4 I.

5 As the WCJ stated in her Report:

6 Applicant sustained an industrial injury to his right wrist on October 29,  
7 2013 while working as an inmate laborer for the California Department of  
8 Corrections and Rehabilitation. Applicant's claim settled via Stipulation  
9 and Award for 31% permanent disability on September 11, 2017. Prior to  
10 the settlement, on May 15, 2017 defendant sent a Notice of Offer of  
11 Modified Work stating that applicant had voluntarily terminated his  
12 employment since he had been released from prison after the injury  
13 occurred (Exhibit 1). Applicant disputed the offer of work and requested a  
14 dispute resolution before the Administrative Director on September 19,  
15 2017 (Exhibit 2). The parties never received a response from the AD.  
16 Applicant thus filed a DOR to address the matter on February 5, 2018  
17 alongside a "Petition for Grant of Supplemental Job Displacement  
18 Benefit" of the same date.

13 The issue was later set for trial. Defendant raised the issue of if  
14 applicant's DOR/Appeal of the Administrative Directors presumed denial  
15 was timely. The Court found that it was not and thus, the ADs  
16 determination (denial) was final. Applicant filed his appeal of this finding  
17 and also arguing that applicant is eligible to the voucher.

16 The parties never received a finding from the Administrative Director;  
17 therefore the request was deemed denied on December 8, 2017 pursuant to  
18 8 CCR 10133.54(f). An appeal of the denial was to be filed by December  
19 28, 2017 per 8 CCR 10133.54(g). Applicant filed his Petition for Grant of  
20 Supplemental Job Displacement Benefit on February 5, 2018, well after  
21 the time allotted per the regulations. 8 CCR 10133.54(g) states "Either  
22 party *may* appeal the determination of the administrative director by filing  
23 a written petition together with a declaration of readiness to proceed  
24 pursuant to section 10250 within twenty days after a request is deemed  
25 denied" (emphasis added). . . .

22 (WCJ's Report, p. 2.)

23 II.

24 "The Division of Workers' Compensation, including the administrative director and the appeals  
25 board, shall have power and jurisdiction to do all things necessary or convenient in the exercise of any  
26 power or jurisdiction conferred upon it under this code." (Lab. Code,<sup>1</sup> § 133.) Part of this power and  
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<sup>1</sup> All subsequent statutory references are to the Labor Code unless otherwise noted.

1 jurisdiction is the authority of the Appeals Board to adopt reasonable and proper rules of practice and  
2 procedure. (§ 5307.) Likewise, the Administrative Director is authorized to “adopt, amend, or repeal  
3 any rules and regulations that are reasonably necessary to enforce this division, except where this power  
4 is specifically reserved to the appeals board.” (§ 5307.3; emphasis added.) Specifically, section  
5 4658.7(h) authorizes the Administrative Director to adopt regulations for the “administration” of the  
6 SJDB, including, but not limited to, administration of an employer’s notices of rights under the SJDB  
7 and the administration of the medical reports that inform of an employee’s capacity to work. (§  
8 4658.7(h).)

9 In light of this authority, the Administrative Director adopted Rule 10133.54, which provides that  
10 “[w]hen there is a dispute regarding the Supplemental Job Displacement Benefit, the employee, or claims  
11 administrator may request the administrative director to resolve the dispute.” (Cal. Regs., tit. 8, §  
12 10133.54(b).) The rule further provides that opposing counsel has twenty (20) calendar days to respond  
13 to the request (subdivision (d)) and authorizes the Administrative Director the power to request  
14 additional information from the parties (subdivision (e)). The Administrative Director has thirty (30)  
15 calendar days from the date that the opposing party’s response is due or thirty (30) calendar days from  
16 the administrator’s receipt of the requested additional information, if any, to issue a written determination  
17 or order. (subdivision (f).) If the Administrative Director fails to issue a written determination or order  
18 within sixty (60) calendar days from the date that the opposing party’s response is due or sixty (60)  
19 calendar days from the Administrator Director’s receipt of the requested additional information,  
20 whichever is later, the request shall be deemed denied. (*Ibid.*) The parties then have twenty (20)  
21 calendar days from the issuance of the Administrative Director’s decision to file an appeal and a  
22 declaration of readiness with a workers’ compensation district office. (subdivision (g).)

23 The WCJ found that applicant is barred from SJDB because applicant failed to timely appeal the  
24 Administrative Director’s presumed denial of his request. However, section 5300 statutorily vests the  
25 Appeals Board with the exclusive jurisdiction to adjudicate claims regarding the “recovery of  
26 compensation, or concerning any right or liability arising out of or incidental thereto” of injuries that  
27 “arise out of and in the course” of employment (§§ 3600(a)); 5300(a); see *Santiago v. Employee Benefits*

1 *Servs.* (1985) 168 Cal.App.3d 896, 901-902.) This exclusive jurisdiction extends to inmates who  
2 sustained injury arising out of and in the course of assigned employment. (§ 3370.)

3 Furthermore, section 4658.7(h) does not abrogate the Appeals Board ability to adjudicate disputes  
4 that arise under this subdivision. Section 4658.7(h) limits the Administrative Director to adopting  
5 regulations “for the administration of this section” and does not extent the Administrative Director’s  
6 authority to adjudicate SJDB disputes.

7 Thus, irrespective of Rule 10133.54, the Appeals Board maintains exclusive jurisdiction to  
8 adjudicate the issue of whether applicant is entitled to the benefits under the SJDB program. (*Weiner v.*  
9 *Ralphs Co.* (2009) 74 Cal.Comp.Cases 736, 742-743 [2009 Cal. Wrk. Comp. LEXIS 143] (Appeals  
10 Board en banc) [“It is settled that the right to workers’ compensation benefits is wholly statutory.”])

### 11 III.

12 Section 4658.7(b) provides that an injured employee with permanent partial disability is entitled  
13 to SJDB benefits unless the employer makes an offer of regular, modified, or alternative work that is  
14 made no later than 60 days of an employee’s permanent and stationary date and the offer is for regular  
15 work, modified work, or alternative work lasting at least 12 months. (§ 4658.7(b).)

16 Section 3370(e) provides, “Notwithstanding any other provision of this division, an employee  
17 who is an inmate, as defined in subdivision (e) of Section 3351 who is eligible for vocational  
18 rehabilitation services as defined in Section 4635 shall only be eligible for direct placement services.” (§  
19 3370(e).) In 2004, Senate Bill 899 (SB 899) terminated vocational rehabilitation benefits as of January 1,  
20 2009. (*Weiner, supra*, 74 Cal.Comp.Cases at 742.) We note, however, that the legislature did not amend  
21 section 3370 to preclude or limit provision of the SJDB voucher to inmates.

22 The fact that the Legislature did not amend section 3370 to preclude or limit provision of the  
23 SJDB voucher convinces us that the Legislature did not intend to restrict inmates from this benefit. “The  
24 Legislature is presumed to be aware of all laws in existence when it passes or amends a statute.  
25 [Citations.] The failure of the Legislature to change the law in a particular respect when the subject is  
26 generally before it and changes in other respects are made is indicative of an intent to leave the law as it  
27 stands in the aspects not amended. [Citations.]” (*Geletko v. Cal. Highway Patro* (2016) 81

1 Cal.Comp.Cases 661, 667 [216 Cal. Wrk. Comp. P.D. LEXIS 202, \*13] citing *In re Greg F.* (2012) 55  
2 Cal.4<sup>th</sup> 393, 407 (quotation and citations omitted.)

3 Furthermore, while defendant timely sent applicant a Notice offering regular, modified, or  
4 alternative work, we note that such offer was not a bona fide job offer because applicant was released  
5 from prison and could not return to prison for employment. (§ 4658.7(b)(1); *Jackson v. California*  
6 *Prison Industry Authority* (August 2, 2017, ADJ9968628) [2017 Cal. Wrk. Comp. P.D. LEXIS 368, \*4-  
7 \*6.) Therefore, the exception found in section 4658.7(b) that releases the employer from providing the  
8 SJDB voucher does not apply.

9 Accordingly, for these reasons, we grant reconsideration, rescind the Findings and Award, and  
10 substitute it with a new Finding that applicant is entitled to supplemental job displacement benefits.

11 For the foregoing reasons,

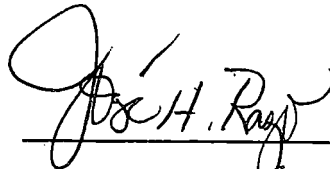
12 **IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation  
13 Appeals Board, that the Findings and Award issued by the workers' compensation administrative law  
14 judge on May 9, 2018 is **RESCINDED** and **SUBSTITUTED** with a new Finding as provided below.

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FINDING OF FACT

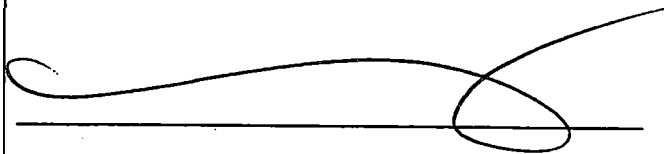
1. Applicant is entitled to supplemental job displacement benefits.

**WORKERS' COMPENSATION APPEALS BOARD**

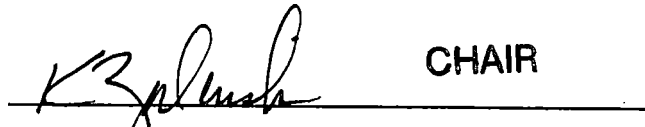


**JOSE H. RAZO**

I CONCUR,



**MARGUERITE SWEENEY**



**CHAIR**

**KATHERINE ZALEWSKI**



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUL 31 2018

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

ANTHONY DENNIS  
PAUL T. DOLBERG – MASTAGNI HOLSTEDT, A.P.C.  
NATASHA M. HEALE – STATE COMPENSATION INSURANCE FUND

LSM/bea

