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Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

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SETTLEMENT OF SUPPLEMENTAL JOB DISPLACEMENT BENEFITS VOUCHER IN POST 1/1/13 CASES

In 2004, Senate Bill 899 was passed, altering many aspects of the previous workers' compensation scheme in California. The changes included abolishment of vocational rehabilitation in favor of a Supplemental Job Displacement Benefits (SJDB) voucher to help pay for educational retraining or skill enhancement at state-approved or state-accredited schools. In practice, an applicant's right to the SJDB voucher could be settled as part of a Compromise and Release agreement between the applicant and the defendant. Such a settlement would extinguish the applicant's right to request and obtain a SJDB voucher despite otherwise being entitled to one.

In 2012 the legislature passed Senate Bill 863, which made alterations to the SJDB voucher scheme that became effective for injuries on or after January 1, 2013. Among those alterations was a prohibition on settlement of the applicant's right to obtain a SJDB voucher as part of an overall Compromise and Release. The change in the voucher program and its prohibition on settlement was to prevent the cashing out of the retraining voucher.

This created the issue of how an employer with a denied case could obtain a complete release of benefits with a Compromise and Release including the employer's liability for providing a SJDB voucher. In the noteworthy panel decision of Beltran v. Structural Steel Fabricators, (2016) 81



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Cal. Comp. Cases 1224, the WCAB answered the question of whether the parties could settle the applicant's entitlement to a SJDB voucher for a post-January 1, 2013 date of injury in cases where there is a dispute as to an employer's liability to provide benefits.

In Beltran, the defendant sought to insert language into their Compromise and Release absolving them of liability for a SJDB voucher based on their affirmative post-termination defense. The judge refused to approve the settlement, and instead insisted that the SJDB voucher could not be settled as part of a Compromise and Release.

The WCAB panel reversed and held that where the trier of fact makes an express finding based upon the record that a serious and good faith issue exists as to AOE/COE to justify a release, a Compromise and Release agreement may be approved by the Board which will relieve the employer from liability for the SJDB voucher.

The WCAB's reasoning in its holding was grounded in the prior decision of Thomas v. Sports Chalet (1977) 42 Cal.Comp.Cases 625. The Thomas decision allowed the settlement of an employee's entitlement to vocational rehabilitation benefits in cases where a serious and good faith issue as to AOE/COE existed, which if resolved adversely against the applicant would defeat all rights to compensation. The WCAB in Beltran stated that the two schemes are analogous and that the reasoning in Thomas could be applied to the case at hand. The decision further commented that the injured worker's entitlement to a voucher is conditioned upon both the acceptance of liability and the existence of permanent partial disability, or a determination of these issues after trial. To prohibit any settlement of a voucher in cases where the employer disputes liability and raises an affirmative defense that could potentially defeat all right to compensation, the court would be forced to set a trial to determine injury and the existence of permanent partial disability in every case. Again referencing Thomas, the WCAB stated that this would in essence do away with settlements despite the existence of good faith disputes on AOE/COE that could bar recovery.

In practice, the WCAB has essentially approved settlement of the applicant's entitlement to a SJDB voucher

in post January 1, 2013 claims when compensability of a claim is in issue. The only limitation is that there must be a finding by the judge approving the settlement that there exists a serious and good faith dispute as to AOE/COE, which if resolved against the applicant would defeat all right to compensation.

In disputed cases, the prudent practitioner should insert language into a Compromise and Release settlement in much the same manner for disputed cases involving a Thomas finding specifying the defenses to the claim that should defendant prevail upon would defeat liability to the claim in its entirety. It should further be mentioned that the Beltran decision is not a "significant panel decision," nor an *en banc* decision, so defendants should be cautious when relying on this case. While WCAB panel decisions are citeable authority, they are not binding precedent; however, the WCAB will consider these decisions to the extent that it finds their reasoning persuasive.

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