

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

**SOCORRO AYALA FLORES, *Applicant***

**vs.**

**G&H SUPPLY COMPANY, LLC;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ17251670  
Oxnard District Office**

**OPINION AND ORDER  
GRANTING PETITION  
FOR RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Defendant State Compensation Insurance Fund seeks reconsideration of the May 20, 2024 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that the Compromise and Release dated March 15 and 18, 2024 is not an adequate settlement of the parties' case due to the inclusion of the *Beltran* waiver as *Beltran v. Structural Steel Fabricators* (2016) 81 Cal.Comp.Cases 1224 [2016 Cal. Wrk. Comp. P.D. LEXIS 366] (*Beltran*) is superseded by Labor Code,<sup>1</sup> section 4658.7(g).

State Compensation Insurance Fund contends that the WCJ erred in a strict construction of section 4658.7(g), that the present legal landscape with respect to Supplemental Job Displacement Benefits (SJDB) is analogous to the status quo pre-2004 Vocational Rehabilitation benefits, and that the *Thomas* waiver in *Thomas v. Sports Chalet* (1977) 42 Cal.Comp.Cases 625 [1977 Cal. Wrk. Comp. LEXIS 2775] (Appeals Board en banc) with respect to Vocational Rehabilitation benefits is analogous to the *Beltran* waiver with respect to SJDB. State Compensation Insurance Fund further contends that applicant has presented no evidence of her entitlement to the SJDB voucher and that State Compensation Insurance Fund is simply seeking a judicial finding that

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<sup>1</sup> All future statutory references are to the Labor Code unless otherwise indicated.

should the parties' dispute be determined adversely to applicant, that finding would preclude all compensation including the SJDB voucher.

We did not receive an answer from applicant. 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 and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we grant reconsideration and amend the May 20, 2024 Findings and Order in accordance with the opinion below.

## FACTS

As the WCJ stated in his Report:

Applicant, SOCORRO AYALA FLORES, aged 59 on the date of injury while employed as a trimmer by G&H SUPPLY COMPANY, LLC, insured by the STATE COMPENSATION INSURANCE FUND claims to have sustained injury arising out of and in the course of employment during the period of continuous trauma from 13 January 2022 to 13 January 2023 to her neck, eyes, and bilateral shoulders, arms and hands.

Applicant filed an Application for Adjudication on or about 31 January 2023 with the Van Nuys District Office. On 23 February 2023, defendant objected to venue in Van Nuys and an Order Changing Venue issued later on 17 April 2023, changing venue to Oxnard. At some point, the applicant was referred for treatment with Dr. Armani, a chiropractor mentioned in the history taken by the PQME in this case, Dr. Brian C. Bashner, an orthopedic surgeon. Dr. Bashner's report of 27 June 2023 is the only medical report that appears in the FileNet portion of the electronic file.

Dr. Bashner found that the applicant's injury was indeed an industrial continuous trauma with no apportionment to non-industrial factors. However, Dr. Bashner also found that there were no temporary or permanent work restrictions. He did find that applicant sustained 3% impairment to the neck based on the AMA Guides but found no need for future medical care. Dr. Bashner also found that the applicant could return to her prior job duties and was therefore not a candidate for vocational rehabilitation.

On 21 March 2024 the parties submitted a Compromise & Release (C&R) for \$30,000.00 which also contained a Beltran waiver. The C&R contained an offer of proof that:

“APPLICANT WAS LAID OFF BY G&H SUPPLY IN JANUARY 2023. THE APPLICATION FOR ADJUDICATION WAS FILED ON 1/31/2023. THEREAFTER APPLICANT WENT TO WORK FOR A DIFFERENT EMPLOYER, AALYX PIK, IN FEBRUARY 2023. ¶ STATE FUND DENIED LIABILITY FOR THE CLAIMED INJURY AGAINST G&H SUPPLY ON 04/24/2023.”

On 25 March 2024 the undersigned issued an Order Suspending Action indicating that the addendum to paragraph 9 of the C&R contained an improper Beltran waiver [See Beltran vs. Structural Steel Fabricators (Lexis Noteworthy Panel, 2016) 81 CCC 1224.] The OSA also specified that it was not possible to settle Supplemental Job Displacement Benefits (SJDB) pursuant to Labor Code § 4658.7(g.)

On or about 27 March 2024, defendant sent a response letter (Exhibit X) that stated defendant’s position in support of a Beltran waiver.

The undersigned then set the case for conference on 24 April 2024 at which the defense argued in favor of a Beltran waiver. The Applicant’s hearing representative did not state a position. The undersigned then reiterated that he would not sign off on a Beltran waiver as the Beltran case was not mandatory authority and contradicts Labor Code § 4658.7(g.) which is mandatory authority. The parties and the judge agreed to set the matter for an adequacy hearing (trial) that focused on that issue.

On 15 May 2024 the adequacy hearing was held at which the matter was submitted for decision on the issue. On 20 May 2024 the undersigned issued a Findings and Order finding that the Beltran language in the C&R was improper as it contained language that violated Labor Code § 4658.7(g.) Specifically, it was found that the C&R was inadequate as a matter of law due to the inclusion of the Beltran waiver. This Petition for Reconsideration followed. (Report, pp. 2-3.)

The Compromise and Release contained the following language:

THIS COMPROMISE AND RELEASE TO WAIVE ANY CLAIM OF APPLICANT TO SUPPLEMENTAL JOB DISPLACEMENT BENEFITS OR VOUCHER IN CONNECTION WITH REHABILITATION UNDER LABOR CODE SECTIONS 139.5 AND 4658.5. SERIOUS AND LEGITIMATE GOOD FAITH ISSUES EXIST WITH REGARD TO THE INJURY AS NOT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT AND/OR LIABILITY FOR

INJURY TO ONE OR MORE BODY PARTS WHICH COULD, IF RESOLVED AGAINST APPLICANT, DEFEAT THE APPLICANT'S RIGHT TO RECOVER BENEFITS. THEREFORE ANY SUPPLEMENTAL JOB DISPLACEMENT BENEFIT OR VOUCHER ARE FORECLOSED PURSUANT TO BELTRAN V. STRUCTURAL STEEL FABRICATORS, STATE FUND (2016) 2016 CAL. WRK. COMP. P.D. LEXIS 366.

THAT IF THE COMPROMISE AND RELEASE IS APPROVED, THE JUDGE, SPECIFICALLY COMMENT ON THE REASONS FOR APPROVAL AND INCLUDE THAT THERE IS A "SERIOUS AND GOOD FAITH THRESHOLD ISSUE." THE FOLLOWING STIPULATED OFFER OF PROOF SUPPORTS THIS REQUEST FOR A BELTRAN FINDING:

THE APPLICANT FILED THE CLAIM FOR COMPENSATION AFTER TERMINATION, WITH NO NOTICE TO G&H SUPPLY OF THE CLAIM PRIOR TO TERMINATION, AND WITH NO KNOWN MEDICAL TREATMENT FOR THE CLAIMED INJURY PRIOR TO TERMINATION. THE APPLICANT WENT TO WORK ELSEWHRE AFTER BEING LAID OFF FROM G&H SUPPLY. (Compromise and Release, p. 10 (all caps in the original).)

### DISCUSSION

The sole issue here is whether the waiver of the SJDB voucher in the Compromise and Release is proper.

Section 4658.7(g) provides:

Settlement or commutation of a claim for the supplemental job displacement benefit shall not be permitted under Chapter 2 (commencing with Section 5000) or Chapter 3 (commencing with Section 5100) of Part 3. (§ 4658.7(g).)

In *Beltran*, 81 Cal.Comp.Cases at p. 1230, a prior panel held that “where the trier of fact makes an express finding based upon the record that a serious and good faith issue exists to justify a release, a compromise and release agreement may be approved by the Board which will relieve the employer from liability for the Supplemental Job Displacement Benefit voucher.”<sup>2</sup> *Beltran*

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<sup>2</sup> Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers' compensation judges (see *Gee, supra*, 96 Cal.App.4th at p. 1425, fn. 6), but the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive (see *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc).)

allowed for the settlement of an SJDB voucher in the limited circumstance where there exists facts to potentially defeat the right to workers' compensation.

The WCJ invites us to issue an en banc or significant panel decision on the issue of whether *Beltran* is superseded by section 4658.7(g). We decline such offer at this time. Under the facts of this case, the SJDB voucher settlement is neither proper under section 4658.7(g) or *Beltran*.

Under section 4658.7(g), it would be improper to settle applicant's entitlement to the voucher. Under *Beltran*, there are no facts in evidence to determine that a good faith issue exists to justify the settlement of the voucher. While there are no medical records in evidence, the WCJ alluded to a report by Brian C. Basher, M.D., who found that applicant sustained 3% whole person impairment. (Report, p. 2.) This permanent impairment along with State Compensation Insurance Fund's admission that it did not offer applicant regular, modified, or alternative work would entitle applicant to a SJDB voucher. (Petition for Reconsideration, p. 6:11-12.) Furthermore, there are insufficient facts to support a post-termination defense. Section 3600(a)(10) provides that:

. . . where the claim for compensation is filed after notice of termination or layoff; including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that one or more of the following conditions apply:

. . .

(D) The date of injury, as specified in Section 5412, is subsequent to the date of the notice of termination or layoff. (§ 3600(a)(10).)

Section 5412 provides:

The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefore 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.)

Here, there are insufficient facts to determine whether the section 5412 date of injury is subsequent to the date of the notice of termination or layoff, thereby precluding State Compensation Insurance Fund from the post-termination defense. Therefore, there are insufficient facts here to potentially defeat applicant's claim to workers' compensation. In other words, there

are insufficient facts here to make a finding, under *Beltran*, that based upon the record, a serious and good faith issue exists to justify a release. Accordingly, we agree with the WCJ that the settlement language of the SJDB in the Compromise and Release is improper.

For the foregoing reasons,

**IT IS ORDERED** that State Compensation Insurance Fund's Petition for Reconsideration of the May 20, 2024 Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 20, 2024 Findings and Order is **AMENDED** as follows:

#### **FINDINGS OF FACT & CONCLUSION OF LAW**

1. Applicant, Socorro Ayala Flores, on the date of injury, while employed as a trimmer at Carpinteria, California by G&H Supply Company, claims to have sustained injury arising out of and in the course of said employment during the period of continuous trauma from January 13, 2022 to January 13, 2023 to her neck, eyes and bilateral shoulders/arms/hands.
2. The Compromise and Release dated March 15 and 18, 2024 is not an adequate settlement of this case.

**ORDERS**

1. **IT IS ORDERED THAT** the Compromise and Release dated March 15 and 18, 2024 be rejected as inadequate.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**July 24, 2024**

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

**SOCORRO AYALA FLORES  
LAW OFFICES OF ANTHONY GLUCK  
STATE COMPENSATION INSURANCE FUND**

**LSM/oo**

*I certify that I affixed the official seal of  
the Workers' Compensation Appeals  
Board to this original decision on this  
date. o.o*