

LAUGHLIN, FALBO, LEVY & MORESI LLP
A Force in Workers' Compensation Defense

**THE BOARD, IN *BELTRAN*,
RESURRECTS *THOMAS* FINDINGS**

**Post 1/1/13 Injury Supplemental Job Displacement Vouchers
Can Now Be Settled**

August 16, 2016

For those carriers who were previously burdened by the vocational rehabilitation system in place for injured workers, the passage of Labor Code §4658.5 on 1/1/04, replacing that system with supplemental job displacement vouchers was a much heralded cost cutting event. Initially, parties were allowed to "settle out" this potential benefit owed to applicant. However, when SB 863 subsequently went into effect on 1/1/13, the Legislature denied parties the right to settle vouchers for injuries after that date.

As is the nature of the beast, attorneys devised creative ways to circumvent the seemingly mandatory prohibition against settlement contained in now Labor Code §4658.7(g), with mixed results.

The rule against settlement of the vouchers has once again changed. This time the previously thought obsolete *Thomas v. Sports Chalet Inc.* (1977) 42 Cal. Comp. Cases 625, has likewise found new life.

In the 8/3/16 unanimous panel decision of *Beltran v. Structural Steel Fabricators*, the WCAB has stricken the mandatory provision of Labor Code §4658.7, and approved a previously suspended Compromise & Release. In doing so, the WCAB allowed settlement of the supplemental job displacement voucher benefit, noting the adequacy of the settlement and the dispute over injury AOE/COE.

By way of background, the parties in *Beltran* initially sought to settle the voucher, identifying in the settlement document an injury AOE/COE dispute. The settlement amount was essentially "nuisance value." On walk-thru, the WCJ suspended action, being unwilling to approve settlement of the voucher based on the post 2013 date of injury.

Defendants filed for reconsideration, arguing the parties should be able to settle the voucher, relying upon *Thomas* by analogy, on the basis that settlement of the voucher should be allowed when injury itself is in dispute. Further, Defendants asserted that a finding of injury is first necessary to establish the applicant would even have the right to the voucher.

Defendants argued that when §4658.7(g) made the supplemental job displacement benefit mandatory, it presumed the applicant would have permanent disability. Further, pursuant to *Thomas*, if the parties indicate there is a good faith dispute over injury, and therefore, a good faith dispute over entitlement to the benefit, parties should be allowed to settle the benefit by mutual consent.

Now that *Thomas* is viable again, we expect to see many more settlements containing "*Thomas*" language as a means of settling vouchers. Moreover, a judge's approval of settlements containing *Thomas* language will be tantamount to a validation of injury being at issue, and give defendants more leverage in the negotiation and settlement of liens.

By: Jiblet Croft, Pasadena Office

Laughlin, Falbo, Levy & Moresi LLP
www.lflm.com