Beltran v. Structural Steel Fabricators

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What We Will Cover:

Thomas v. Sports Chalet, Inc. (1977) 42 CCC 625

Labor Code §§ 4658.5-4658.6


When An Employer Is Not Liable For Supplemental Job Displacement Benefits
Thomas v. Sports Chalet, Inc. (1977) 42 CCC 625

What Happened in 1977?
Thomas  Case Summary:

Q:

What was the Issue?

A:

Can Vocational Rehabilitation Benefits be settled in a Compromise and Release?
Thomas Summary (Facts):

Q:

What are the relevant facts?

A:

In 1965 the California legislature introduced the concept of "vocational rehabilitation" (job retraining) in Labor Code § 139.5. In 1974, the legislature amended Labor Code § 139.5 to provide that vocational rehabilitation would be "at the expense of the employer or the insurance carrier." Labor Code § 4646 prohibited settlement or commutation of prospective rehabilitation services. The parties attempted to resolve rehabilitation services in a Compromise and Release asserting applicant could not prove the right to any benefits at all based on a Labor Code § 3600 dispute that was unresolved pre-trial.
Thomas Summary (Litigation):

Q:

What happened?

A:

The court(s) held resolution of vocational rehabilitation issues were allowed when a good faith issue was raised that would, if resolved against the employee, defeat his claim for all benefits.
The New Road

Labor Code §§ 4658.5-4658.6

Q:

What’s happened since Labor Code §4646 and Thomas?

A:

In 2003, Labor Code § 139.5 and Labor Code §§ 4635 through 4647 were repealed, and in 2004, Labor Code § 139.5 was reenacted for injuries occurring before January 1, 2004 and remained in effect until January 1, 2009. In its place, the legislature created a "supplemental job displacement benefit" for specified workers who are permanently partially disabled, to be used for retraining. But the new system applied only to injuries occurring on or after January 1, 2004.
The New Road

Vocational Rehabilitation Service Rights Were Eliminated

Q:

What’s happened since Labor Code §4646 was repealed and *Thomas* was decided?

A:

On June 10, 2009, the WCAB issued decided (en banc) in *Weiner v. Ralphs Company* 74 Cal. Comp. Cases 736 (Cal. Wrk. Comp. 2009) that (1) the repeal of Labor Code 139.5 terminated vocational rehabilitation benefits or services rights pursuant to orders or awards that were not final before January 1, 2009, (2) no saving clause was adopted to protect vocational rehabilitation rights in cases still pending on or after January 1, 2009, (3) vocational rehabilitation statutes (Lab. Code §§ 4635-4647) that were repealed in 2003 do not continue to function as "ghost statutes" on or after January 1, 2009, (4) effective January 1, 2009, the WCAB lost jurisdiction over non-vested and inchoate vocational rehabilitation claims, but the WCAB continues to have jurisdiction under Labor Code 5502(b)(3) and Labor Code 5803 to enforce or terminate vested rights, and (5) subject matter jurisdiction over non-vested and inchoate vocational rehabilitation claims cannot be conferred by waiver, estoppel, stipulation, or consent.
Thomas Post Labor Code §§ 4635 through 4647 Repeal

Q:

What’s happened since Labor Code §4646 was repealed, and Thomas was decided, and supplemental job displacement benefits “took the place of” vocational rehabilitation benefits?

A:

Supplemental job displacement benefits could be settled for dates of injury from January 1, 2004-January 1, 2013 pursuant to Labor Code § 4658.5, were precluded from settlement pursuant to Labor Code § 4658.7(g) and an employer was not liable for a supplemental job displacement benefit under specific enumerated exceptions pursuant to Labor Code § 4658.6.

So arguably the finding in Thomas was repealed or no longer binding after vocational rehabilitation benefits were repealed.

Or, Was It?
Q:
Did you read the July 2015, Volume 7, Issue 3 Article Settling SJDBs Post-2013 and Thomas v. Sports Chalet?

A:
?
Q:
What happened?

A:
Applicant Beltran, his attorney and SCIF entered into a Compromise and Release resolving SDJBs in which a workers' compensation administrative law judge (WCJ) approved the parties' Compromise and Release Agreement but added language stating that the “parties may not settle or commute SJDV per LC §4658.7(g) CCR§10133.31 (h),“ which effectively disallowed the parties' agreement to settle any claim applicant may have to a Supplemental Job Displacement Benefit voucher pursuant to Labor Code section 4658.7.
Beltran Summary (Litigation):

Q:
What happened?

A:
Defendant SCIF filed a Petition for Reconsideration and contended the WCJ exceeded her authority by modifying the terms of the parties' Compromise and Release Agreement without agreement of the parties, and argued that in a denied claim the parties are permitted to settle the Supplemental Job Displacement Benefit voucher where a good faith dispute exists which could potentially defeat applicant's entitlement to all workers' compensation benefits.
Beltran Summary (Litigation):

Q:

What happened?

A:

The Workers’ Compensation Appeals Board granted reconsideration and held that where the parties establish there is a good faith dispute which, if resolved against applicant, would defeat entitlement to all workers' compensation benefits, applicant may settle the claim by a Compromise and Release Agreement that also settles his potential right to the Supplemental Job Displacement Benefits voucher. Under the facts presented it held the parties have established that a good faith dispute existed, granted defendant's petition and issued an order approving the parties' Compromise and Release Agreement that included the settlement of the Supplemental Job Displacement Benefit voucher.
Beltran Summary (Post-Litigation):

Q:

So what now? Do you have to have a Labor Code §3600 AOE/COE dispute to settle SJDBs?

A:

I argue the answer is “No.” The Workers’ Compensation Appeals Board did hold a party must “establish there is a good faith dispute which, if resolved against applicant, would defeat entitlement to all workers' compensation benefits” in its decision, but what if it can be established a “good faith dispute, which resolved against applicant, would defeat entitlement only to SDJBs?” I argue defendant is still entitled to an Order Approving the parties' Compromise and Release Agreement that includes the settlement of the Supplemental Job Displacement Benefit voucher.
Beltran Summary (Post-Litigation):

Q:

So how do you do that (and does it work)?

A:

Example: Labor Code § 4658.6 (see handouts) is very clear regarding when an “employer (is) not liable for supplemental job displacement benefit.” Loss of the benefit occurs as a matter of law when “within 30 days of the termination of temporary total disability payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work meeting all of” all four (4) enumerated statutory requirements. If the employer has complied many Workers’ Compensation Administrative Law Judges do and some who won’t should issue an Order Approving the parties’ Compromise and Release Agreement that includes the settlement of the Supplemental Job Displacement Benefit voucher. See handouts attached.
Beltran Summary (Post-Litigation):

Q:

So how do you do that (and does it work)?

A:

You must present a record to the Workers’ Compensation Administrative Law Judge and Workers’ Compensation Appeals Board reflecting a good faith dispute which, if resolved against applicant, would defeat entitlement to all workers' compensation benefits” or “good faith dispute, which resolved against applicant, would defeat entitlement only to SDJBs” noting not every Workers’ Compensation Administrative Law Judge will issue a Labor Code §5001 approval as if the Workers’ Compensation Administrative Law Judge finds your offer or the Compromise and Release “inadquate” in any way the settlement must not or should not be approved. However in my opinion if your offer of proof is adequate and supported by a documented factual record legally it approval should issue in accordance with the rationale outlined in the Workers’ Compensation Appeals Board’s Beltran decision. And: yes, it works (see handouts).
Questions and Answers But No Legal Advice.