



IN ORDER FOR AN INJURED WORKER TO RECEIVE VOCATIONAL REHABILITATION BENEFITS, THERE MUST BE A FINAL ORDER PRIOR TO JANUARY 1, 2009

WEINER V. RALPHS CO. (2009 EN BANC) 74 CCC ___, MON 0305426

In an en banc decision, the WCAB held that the repeal of Labor Code 139.5 terminated any rights to vocational rehabilitation benefits or services that were not ordered or awarded before Jan. 1, 2009.

BACKGROUND

In this case, the Rehabilitation Unit issued a Determination dated July 9, 2008 that the claimant, Lawrence Weiner, was entitled to a retroactive vocational rehabilitation maintenance allowance from June 2003 through March 2005. The defendant filed a timely appeal, with a declaration of readiness. A trial took place before a WCJ in November 24 2008, and the parties submitted the matter for a decision.

On January 13, 2009, after the statute had been repealed, the WCJ issued a Findings and Award concluding that Weiner was entitled to retroactive VRMA at his temporary disability rate for the same time period, and awarded those benefits. The defense filed a petition for reconsideration, which the WCAB granted for en banc review.

RULING

In the unanimous en banc decision, the WCAB found that there was no final order prior to January 1, 2009. Therefore, Weiner was not entitled to retroactive VRMA at the TD rate from June 2003 through March 2005, and the Determination of the Rehabilitation Unit dated July 9, 2008 was ordered vacated.

The WCAB described the WCAB's jurisdiction over specific vocational rehabilitation issues, in the wake of the repeal of workers' compensation statute, Labor Code 139.5, which was officially repealed on Jan. 1, 2009. "The language that section 139.5 'is repealed as of Jan. 1, 2009,' is clear and unambiguous," the commissioners wrote. "Although it hardly needs stating, the term 'repeal' ordinarily means revocation, rescission, abrogation, or destruction ..."

The commissioners' holding states:

- "The repeal of section 139.5 terminated any rights to vocational rehabilitation benefits or services pursuant to orders or awards that were not final before Jan. 1, 2009."
- "A saving clause was not adopted to protect vocational rehabilitation rights in cases still pending on or after Jan. 1, 2009."
- "The vocational rehabilitation statutes that were repealed in 2003 do not continue to function as 'ghost statutes' on or after Jan. 1, 2009."
- "Effective Jan. 1, 2009, the WCAB lost jurisdiction over non-vested and inchoate vocational rehabilitation claims, but the WCAB continues to have jurisdiction under sections 5502(b)(3) and 5803 to enforce or terminate vested rights."
- "Subject matter jurisdiction over non-vested and inchoate vocational rehabilitation claims cannot be conferred by waiver, estoppel, stipulation, or consent."

The WCAB commissioners' decision arrived 10 days after the 2nd District Court of Appeal's decision to grant a petition for a writ of review in another case (Beverly Hilton Hotel v. WCAB, No. B212205) also featuring jurisdictional issues. The appellate court set a hearing date for

August 4, 2009. Until the 2nd District Court of Appeal issues a decision, the WCAB's decision stands as binding law.