

# INTER - OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS

FROM: W. JOSEPH TRUCE

DATE: August 15, 2001

RE: LC §132a - Good Faith Belief by Employer that Applicant Cannot Perform Usual and Customary Job

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In a recent writ denied case entitled Joseph J. Rossi v. WCAB (City of Manteca), (April 2001) 66 CCC 538, the Board has once again reaffirmed that the employer did not violate LC §132a in refusing to allow an applicant to return to the usual and customary job as a street maintenance worker—when the defendant had a good faith belief that the applicant was physically unable to perform his usual job duties and/or was at risk of re-injury.

In this case, the WCAB confronted a case in which there were conflicting medical reports as to whether or not the applicant could return to his job duties with the employer.

The Board stated in relevant part as follows:

“We realize that on, December 16, 1998, applicant’s treating physician, Dr. Purnell, declared him to be permanent and stationary with *no* restrictions. . . We also realize that applicant had returned to work on or about July 9, 1998 . . . and that he was allegedly performing his full duties thereafter. However, the June 21, 1999 report of applicant’s QME, Dr. Woodcox, imposed significant restrictions on him . . . upon receiving Dr. Wilcox June 21, 1999 report, defendant . . . consulted . . . the supervisor of applicant’s department, who advised defendant that applicant could not do his job of the street maintenance worker . . . with the restrictions imposed by Dr. Woodcox . . .”

Once again, the WCAB relied on the analysis of the applicant’s supervisor—in reviewing medical reports—as to whether or not the applicant could perform his usual and customary duty and held that under the doctrine of “business realities” defendant did not violate Labor Code §132a.

The Board reached a similar conclusion in another writ denied case: Raymond Sedano v. WCAB 66 CCC 544.

Enclosure - Joseph J. Rossi v. WCAB (City of Manteca), (April 2001) 66 CCC 538

WJT:rx

