

# INTER - OFFICE MEMORANDUM

**TO:** ALL ATTORNEYS/CLIENTS

**FROM:** W. JOSEPH TRUCE

**DATE:** April 29, 2003

**RE:** DENIAL OF REHABILITATION REQUESTED BEYOND  
FIVE YEARS FROM THE DATE OF INJURY

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In an extremely important writ denied case entitled Coleen M. Stenson (Schlabes) v. Workers' Compensation Appeals Board, State of California Department of Corrections a panel of the Appeals Board held that a request to resume vocational rehabilitation services, when made after five years from the date of injury, was barred by Labor Code Sections 5405.5 and 5410, even when there is an agreed-upon interruption period that expired within the five year period.

In this case the applicant, Coleen Stenson (Schlabes) sustained an admitted industrial injury to her right knee on October 22, 1993.

The applicant's primary treating physician found on March 9, 1995 that the applicant was a QIW and accordingly the defendant sent letters to the applicant advising her as to her vocational rehabilitation rights.

On March 2, 1995 the applicant advised defendants that she wanted vocational rehabilitation but not at that time due to ongoing medical treatment and surgeries.

On June 21, 1995 the applicant met with a vocational rehabilitation counselor and at that time declined to develop a formal Vocational Rehabilitation Plan - presumably because of her industrial injury and disability status.

On July 24, 2000 or more than five years following the injury, the applicant's condition was found to be permanent and stationary, and applicant contacted defendant requesting vocational rehabilitation services.

This request was denied by defendant as it was made more than five years from the industrial injury.

After a hearing, the Rehabilitation Unit agreed with the defendant and on September 7, 2000 held that applicant's request was an additional request for rehabilitation services rather than an initial request.<sup>1</sup>

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<sup>1</sup>Although it is not specified in the decision, an initial request for vocational rehabilitation services can be made up to one year following the last finding of permanent disability or one year from an Order Approving Compromise and Release, even though the request is more than five years from the date of injury.

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Applicant appealed the decision of the Rehabilitation Consultant to the Workers' Compensation Judge and the WCJ reversed the decision of the Rehabilitation Unit and found that the applicant's request was an original and timely request and allowed the applicant to go forward with rehab.

Defendant filed a Petition for Reconsideration and a panel of the Appeals Board reversed the decision of the WCJ and in barring the applicant's request for vocational rehabilitation the Board relied on the Court of Appeal decision in Sacramento County Office of Education v. Workers' Compensation Appeals Board 84 Cal. App. 4<sup>th</sup> 107 and in distinguishing this case from Roberts v. Workers' Compensation Appeals Board (1992) 3<sup>rd</sup> Cal. App. 4<sup>th</sup> 631 stated in relevant part as follows:

**"The instant case is distinguishable from Roberts in several respects, as applicant herein did much more to pursue vocational rehabilitation than the injured worker in Roberts. First, applicant was sent detailed notices of eligibility for vocational rehabilitation, which explained her rights to pursue said benefits. Applicant then initiated vocational rehabilitation services when she met with a vocational counselor..."**

Therefore in any case that we have in which the applicant makes a request for rehabilitation services more than five years from the date of the original injury, we should scrutinize the case carefully to ascertain whether or not applicant's request is an original request or a subsequent request.

~~WJT:dab~~

Attach - Coleen Stenson case