

KEGEL, TOBIN & TRUCE

INTEROFFICE MEMORANDUM

TO: ALL ATTORNEYS AND CLIENTS  
FROM: W. JOSEPH TRUCE  
DATE: DECEMBER 6, 2004  
RE: VOCATIONAL REHABILITATION - FIVE YEAR  
STATUTE OF LIMITATIONS

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In *Konjit M. Worknhe v. Workers' Compensation Appeals Board*, 69 Cal. Comp. Cases, the Board **once again** found that an applicant's request "for reinstatement of vocational rehabilitation services was barred under Labor Code §5405.5 and 5410, when applicant made timely initial requests for services, which were provided by defendant, interrupted services several times for specified periods, and did not seek reinstatement of services until more than five years after the date of injury..."

The Board's holding in *Worknhe* reminds us once again that when we receive a request for the provision of vocational rehabilitation benefits, we must look for the following:

1. Was the request made more than five years from the date of injury?
2. If so, had there already been a prior request for vocational rehabilitation services?

In *Worknhe*, the applicant **originally** requested vocational rehabilitation services within five years of the date of injury and the services were provided. However, the parties agreed to an **interruption** of vocational rehabilitation services.

The applicant then again requested VR services and then again requested an **interruption** which was granted.

On April 2, 2002, the applicant, for a third time, requested vocational rehabilitation services and this time the request was objected to as said request came after five years from the date of injury.

In reversing the decision of the Workers' Compensation Judge (WCJ), ordering defendant to provide vocational rehabilitation services to the applicant, the WCAB issued its opinion after reconsideration, citing the Court of Appeal decision in *Youngblood v. Workers' Comp. Appeals Board* (1989), 216 Cal. App. 3d 764; 54 Cal Comp. Cases 489.

The court noted that in *Youngblood*, the Court of Appeal attempted to reconcile Labor Code §5405.5 and §5410 as regards vocational rehabilitation..."

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The Board noted that in *Youngblood*, the Court of Appeal determined that pursuant to Labor Code §5410, neither the Rehabilitation Unit nor the WCAB has jurisdiction to entertain a further request for rehabilitation where rehabilitation entitlement had been previously adjudicated if that request is made more than five years from the date of injury..."

Therefore, the Board concluded as follows:

**"Thus, where a vocational rehabilitation plan is interrupted or suspended for a specified period of time, and the employee does not either request the resumption of vocational rehabilitation services or an extension of the suspension within that specified period, any further request for vocational rehabilitation will be barred, unless made within five years of the date of injury..."**

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