

# COMPENSATION NEWS

MONTHLY REPORT

## AN OFFER OF MODIFIED OR ALTERNATIVE WORK MUST BE PRECISE IN DESCRIPTION

This is a non published decision that deals with the issue of modified or alternative work offered to and injured worker in a rehabilitation plan.

### **JACK IN THE BOX, INC. V. WCAB (MORRISON)**

The applicant was injured while working as a clerk at Jack In The Box. The applicant received a Findings and Award for medical care and temporary disability. The applicant had back surgery. The treating doctor indicated that the applicant could return to work with certain restrictions.

The applicant requested Vocational

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Rehabilitation services. The employer responded with a Notice of Offer of Modified or Alternative Work ( DWC Form RU-94). The offer contained the title of the job offered. The applicant responded to the Department of Rehabilitation indicating that the job offer was not satisfactory. The applicant complained that the job title did not explain the position offered sufficiently, the physical demands of the job offered, or the amount of wages.

The Rehabilitation Unit determined the applicant was entitled to full rehabilitation services. The employer appealed this decision to the Workers' Compensation Appeals Board (WCAB). The matter was tried before a Workers' Compensation Judge (WCJ). The WCJ determined that the employer had not made a valid offer of modified or alternative work to meet the statutes requirements. The WCAB affirmed the decision on reconsideration and a writ was filed by the employer.

The Court Of Appeal looked at Labor Code Section 4644. This section limits an employer's obligations for

rehabilitation costs if certain criteria are met. This appellate court indicated that Labor Code section 4644 must be read in light of a liberal construction in favor of the employee.

The appellate court examined this specific offer and found that it was not adequate. The offer met two minimum statutory requirements. The DWC Form RU-91 provided information indicating the physical requirements of the job offered, where the job was to be performed, and that the job offer was within a reasonable commute.

However, it did not indicate that it was a regular position or that it would last at least 12 months. The court also found the job description to vague to apprise the applicant of the job's duties.

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