

COMPENSATION NEWS

MONTHLY REPORT

Due diligence during discovery means reasonable diligence

DISCOVERY UNDER 5502 (D) (3)

This is an unpublished case but is significant for many reasons. The applicant alleged bilateral carpal tunnel syndrome. The applicant filed a workers' compensation claim and was referred for treatment. The applicant testified at her deposition that her hands started hurting about a year after going to work for the employer.

The defendant denied the claim. The case went to a mandatory settlement conference at which time both sides listed their evidence in accordance with Labor Code section 5502 (d) (3).

In this issue.

Gelsons v. WCAB (Baez)1

A trial took place and applicant testified at trial that her complaints began in the year 2000. After the trial, but before the judge issued a decision, the defendant did a "master trace". The defendant discovered the history given to the doctor's and the testimony at trial and deposition was not accurate. There were records the applicant had been diagnosed with carpal tunnel at the commencement of her employment with the defendant in 1999.

The defendant requested the record be reopened. The Workers' Compensation Judge (WCJ) did not address the reopening of the record and found for the applicant. The defendant appealed and the Workers' Compensation Appeals Board (WCAB) denied reconsideration and did not admit the records.

The appellate court indicated that 5502 (d) (3) does not define due diligence. Section 10856 discusses reasonable diligence. Therefore, the court decided that due diligence is the same as reasonable diligence. The court overturned the WCAB because the opinion was not based on substantial evidence since they did not review the prior records.

The court also made an interesting observation that carpal tunnel does not develop over a short period of time. This would be something to have the doctor address at the time of any evaluation.

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