

COMPENSATION NEWS

MONTHLY REPORT

VOCATIONAL REHABILITATION CAN BE SETTLED FOR \$10,000

Vocational rehabilitation can now be settled

The applicant sustained a specific injury and alleged a cumulative trauma. The parties entered into a Compromise and Release that was approved by the Workers' Compensation Appeals Board (WCAB). The agreement did not settle vocational rehabilitation.

The parties, thereafter, entered into a stipulation settling vocational rehabilitation. The Rehabilitation unit rejected the stipulation on the ground that you could not settle rehabilitation on an admitted injury.

PEB WORTH V. WCAB. . . 1

The parties appealed to the WCAB. The Workers' Compensation Judge (WCJ) agreed with the rehabilitation unit. They appealed on the grounds that Labor Code section 4646, subdivision (b), indicates that you can settle vocational rehabilitation for a lump sum for up to \$10,000. A petition for reconsideration was filed by both parties.

The WCAB agreed with the rehabilitation unit and the WCJ stating that section 4646 only applies to injuries after January 1, 2003. The parties appealed.

The appeals court looked to whether the section was prospective or retroactive. They looked at statutory construction to make the statute reasonable.

They indicated that whether the section would be applied retroactively depended on whether the statute was

procedural or substantive. A procedural statute may be applied to pending cases even if the event occurred before the statute took effect. The court decided vocational rehabilitation could be settled in this case.

Another reason this case is important is to analogize the reasoning of the court to the treating doctor's presumption. The wording of Labor Code section 4062.9 was changed recently. It is the editor's opinion that the treating doctors presumption no longer applies.

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