

COMPENSATION NEWS

MONTHLY REPORT

CREDIT FOR PERMANENT DISABILITY ADVANCES ALLOWED

This is a published decision.

At a mandatory settlement conference the applicant rejected an offer to compromise and release the case. The settlement proposed was for \$20,000, less permanent disability advances of \$2,442.87.

At a later conference the applicant agreed to a settlement of \$24,000. The compromise and release that was prepared for the first conference and rejected by the applicant was used for this settlement. A 4 was written over the 0 in 20,000 in the first

settlement document. The permanent disability advance amount was not changed. However, there was language that defendant was entitled to credit for further permanent disability advances.

The permanent disability advances after the second conference were considerably higher and the carrier took credit for them.

The applicant filed an application for penalties and interest. At trial the applicant testified that she signed the settlement under duress. The Workers' Compensation Judge found no reason to set aside the settlement, but only granted the advances delineated in the settlement.

Defendant filed a petition for reconsideration. The Workers' Compensation Appeals Board

did not allow the further advances.

The appellate court stated that the settlement was a legal question as opposed to a factual question and resolved by contract principles.

The contract is the result of negotiations. The applicant was aware that she had received additional permanent disability advances. The court followed *Escamilla v. WCAB* (writ denied) (1995) 60 CCC 45. This stands for the proposition that the norm is to give the employer full credit for permanent disability advances.

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