

# COMPENSATION NEWS

MONTHLY REPORT

## CIGA not responsible for and insolvent carrier's delay in paying of benefits

This is an en banc decision of the Workers' Compensation Appeals Board (WCAB).

**T**he applicant sustained an admitted injury in 1999. Fremont Insurance assumed responsibility.

The applicant's primary treating doctor asked for authorization for surgery and submitted the proper documentation to Fremont. Surgery was not timely

authorized. Fremont finally authorized surgery three months after the request. Fremont subsequently became insolvent.

The case was tried and a Workers' Compensation Judge (WCJ) found a penalty on behalf of the insolvent carrier California Insurance Guarantee Association (CIGA).

The penalty was appealed by CIGA. The WCAB issued this decision.

CIGA's mandate is that it only pays "covered claims". Insurance Code 1063.1 (c) (1) sets the definition for "covered claims". Sections 1063.1 (c) 3 through 12 deals with the exceptions. Section 1063.1 C (8) was amended for awards issued on or after January 1, 2004. This section deals with penalties.

The WCAB indicated that the language is clear that "covered claims" do not include an award made pursuant to Labor Code section 5814 or 5815.

Therefore no penalties will apply to CIGA in this case.

It is too early to determine whether a writ will be filed on this case. If one is filed it would seem the same result will come about from the appeals court based on the plain meaning of the statute.

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