

# COMPENSATION NEWS

MONTHLY REPORT

## NEW APPORTIONMENT LAW REVIEWED IN KEY CASE

This is a published case.

The applicant had an industrial injury in 1993. The applicant had another industrial injury in 1996. After the second injury, the applicant settled the first injury by Stipulation With Request For Award for 42 3/4 percent permanent disability. This may have been a tactical error by applicant's attorney.

The second injury went to trial. A Workers' Compensation Judge (WCJ) ruled the applicant was 100 percent disabled. However, the WCJ apportioned. The WCJ used the subtraction

method and subtracted the 42 3/4 percent prior award leaving the applicant with a 57 1/4 percent award for the second injury. Applicant wanted a finding of 100 per cent.

The applicant filed a petition for reconsideration. The Workers' Compensation Appeals Board (WCAB) agreed with the WCJ and denied the petition. The applicant then filed a Writ and this court reviewed the facts.

The appeals court reviewed Labor Code section 4750. They reviewed the applicable case law regarding section 4750. They determined that in this case there was an Agreed Medical Examiner (AME) who apportioned to the prior disability. Moreover, at the time of the second injury, the applicant was receiving treatment, taking medication, wearing a leg brace, and taking time off work.

The court noted that on April 19, 2004 the Legislature past a new bill that was a conclusive presumption on apportionment. (SB 899). This was regardless of the date of injury. They indicated that the law states that the prior injury is conclusively presumed to exist at the time of the subsequent injury. They indicated that even if there was not substantial evidence to support apportionment the WCAB would be bound to apportion based on the conclusive presumption. Even though this is a non published case this case is very significant as to how the court will rule.

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