

COMPENSATION NEWS

MONTHLY REPORT

NEW APPORTIONMENT LAW REVIEWED IN KEY CASE BY WCAB

This is a en banc
decision by the
WCAB

The applicant had an
industrial injury on
February 12, 2002.

The applicant had a prior injury
to the same body part in 1997.
The applicant had continuing
problems up until the current
injury. In fact, the applicant was
still receiving treatment on
January 31, 2002 for the 1997
injury.

The Mandatory settlement
conference was held on
November 13, 2003. A trial was
held on February 18, 2004. The

Workers' Compensation Judge
(WCJ) referred the case to the
Disability Evaluation Unit. The
case was deemed submitted.

On April 19, 2004 SB 899
was enacted and created new
apportionment legislation.

ON April 23, 2004 the WCJ
found the applicant had a
34% disability without
apportionment. Defendant filed a
petition for reconsideration which
resulted in this opinion.

The Workers' Compensation
Appeals Board (WCAB) issued
an en banc decision that included
a concurring and dissenting
opinion. They could not reach a
unanimous decision on this
important issue. This case is
going to an appellate court for
review.

The WCAB first dealt with
what an existing order, decision

or award dealt with under Labor
Code section 4663. If the new
statute applied the decision of the
WCJ would have to be rescinded.
They held in this case that the
case was submitted prior to April
19, 2004.

They further held where there
is no existing order, decision, or
award, the apportionment
provisions of SB 899 apply to all
cases irrespective of the date of
injury.

The concurring opinion
indicated orders of submission
were not sufficient.

The dissent indicated the
majority's decision was contrary
to legislative intent.

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