

COMPENSATION NEWS

MONTHLY REPORT

Labor Code section 5814 is reviewed under the new law

This is an Appellate Court decision that is published.

The applicant claimed an industrial injury for orthopedics, psychiatric and internal injuries. The applicant filed an application and indicated vocational rehabilitation was in issue.

The defendant denied the case. The parties referred the applicant to an orthopedist and psychiatric agreed medical examiner, who both found the injury industrial related. The doctor also recommended vocational rehabilitation.

The applicant petitioned for increased compensation under Labor Code section 5814, for denying benefits. The parties, thereafter, entered into a Stipulation with Requests for Award for a 58 percent permanent disability. The penalty issue was submitted at a trial without testimony.

The Workers' Compensation Judge (WCJ) awarded a 10 percent penalty under former section 5814 against temporary and permanent disability, medical treatment and vocational rehabilitation. The WCJ awarded only one penalty and the applicant petitioned for reconsideration contending a separate penalty based on each medical. This all transpired prior to April 19, 2004.

The appellate court determined that the new

legislation affected substantive rights and therefore, the legislation was retroactive.

The appellate court ruled that each agreed medical examiner report was a separate, legally significant event under the Christian case so that multiple penalties might be awarded.

The appellate court also indicated that applicant waived his right to vocational rehabilitation benefits by not raising the argument before the Workers' Compensation Appeals Board.

=====

Editor: Harvey Brown
Firm: Samuelsen, Gonzalez, Valenzuela and Brown

In this issue...

Green v.WCAB (City of Compton) 1