

COMPENSATION NEWS

MONTHLY REPORT

The Workers' Compensation Appeals Board issues apportionment decision

This is En Banc decision of the WCAB,

The applicant sustained an industrial injury to his low back. The major issue at the time of trial was permanent disability and apportionment. The applicant had a prior injury at the same employer to the same part of the body. The applicant received a stipulated Award on the prior injury of 49%.

The current injury went to trial. The Workers' Compensation Judge (WCJ) took judicial notice of the prior 49%

award. The WCJ then issued rating instructions to the Disability Evaluation Unit which yielded an overall rating of 80%.

The disability evaluator recommended a rating of 31%. This was the subtraction method of subtracting the prior 49% award from the current 80 % rating. The WCJ agreed and issued a Findings and Award for 31%.

The applicant attorney filed a petition for reconsideration asking that the percentage not be subtracted but rather the dollar value be subtracted. The applicant argued that Fuentes was no longer controlling because of the passage of SB 899.

The Workers' Compensation Appeals Board (WCAB) issued this en banc decision stating that Labor Code sections 4663 (c) and 4664 (a) mandate that the

percentage of disability (not the dollar amount) be subtracted.

The WCAB indicates the fact that Fuentes was an analysis of the apportionment law under Labor Code section 4750, which was repealed, does not change the legislative intent in adopting the new apportionment statutes.

They indicated you find the overall permanent disability. You then subtract the percentage of permanent disability caused by other factors under section 4663 (c) or previously awarded under section 4664 (b).

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