

COMPENSATION NEWS

MONTHLY REPORT

Court of Appeal issues decision on apportionment that is published

This is a published decision

The applicant filed a claim alleging a specific injury to his back in 2002. The claim was apparently admitted as industrial.

The applicant had a previous back injury at the same employer in 1996. The case was settled for 20.5 permanent disability by Stipulation with Request for Award. This was equal to \$11,680 for the 1996 date of injury.

The 2002 injury was

In this issue..

Gallo Winery v WCAB (Dykes) 1

submitted to a Workers' Compensation Judge (WCJ). The WCJ found the applicant 73 per cent permanently disabled. From this overall rating the WCJ subtracted \$11,680, not the 20.5 per cent. The defendant filed a petition for reconsideration contending that the percentage needs to be subtracted, not the dollar amount. The Workers' Compensation Appeals Board (WCAB) denied reconsideration and agreed with the WCJ.

The court of appeal stated that the long standing case of Fuentes v. WCAB did not apply to the new legislation of SB 899.

The court of appeals indicated that there are three formulas that could be used. Formula A would subtract the prior percent of disability, as in Fuentes. Formula B looks to the number of weeks that are paid. This formula was rejected also.

Formula C was adopted(which was rejected in Fuentes) which subtracts the dollar amount of the previous award. There reasoning was that Fuentes relied on Labor Code section 4750, which is repealed, and replaced with section 4664.

They also awarded the applicant a life pension because his overall disability was 73 per cent. This really does not make sense and appears to be totally contrary to all legislative intent. This should be appealed to the Supreme Court.

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