

COMPENSATION NEWS

MONTHLY REPORT

Court of Appeal issues decision on apportionment that is non published

This is a non
published decision

The applicant filed a claim alleging a cumulative trauma for cardiovascular that led to a stroke.

The applicant often worried about driving in traffic in southern California. The applicant lost sleep, was anxious, and stressed about getting lost, missing turns and not arriving on time. On the day of the stroke the applicant had driven 450-500 miles. The applicant got home and did 30 minutes of yard work.

During the night the applicant went to the hospital and was diagnosed with a stroke.

The defense had two Qualified Medical examiners (QME's). The Workers Compensation Judge (WCJ) found injury and a 70 percent disability on applicant's QME. He did not find on the defense QME's because one physician had been convicted of health care fraud in federal court and the other was reporting outside the required specialty of internal medicine.

The defendant appealed. The Workers' Compensation Appeals Board (WCAB) upheld the WCJ. Defendant contended there should have been apportionment even on applicant's QME.

The applicant's QME indicated that he would not apportion because the disability

was entirely industrial. However, elsewhere in his report, the doctor indicated there were other factors of contribution, including his age, his genetic history, and being overweight.

The court of appeal indicated that SB 899 requires apportionment in this type of situation. Therefore, the applicant's QME was not substantial evidence on the issue of apportionment. The WCAB should reopen discovery and further develop the record. This is the case even though defendant never cross examined applicant's QME.

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