

COMPENSATION NEWS

MONTHLY REPORT

En Banc decision on apportionment dealing with Compromise and Release

This is an en banc decision

The applicant filed a claim alleging two claims for injury. The first was in December 2001. It was an injury to the back. It was admitted. The second injury was admitted, and occurred on August 2, 2002. It also was to the back.

On May 9, 1998 the applicant had a back injury. This injury resulted in the applicant having a lateral microdiscectomy. The applicant was rehabilitated. The case settled by compromise and Release in September 1999.

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Pasquotto v Hayward Lumber

The applicant had a pre-employment physical that he passed, prior to the current injuries.

The case was tried by a Workers' Compensation Judge (WCJ) who found for the 2001 and 2002 cases the applicant was not entitled to anything. The WCJ reasoned the applicant had a prior disability of no heavy work for the 1998 injury and the same restriction for the 2001 and 2002 injuries. Applicant petitioned for reconsideration. The Workers' Compensation Appeals Board issued an en banc decision.

They indicated that a compromise and release, without more, is not a basis for apportioning under Labor Code section 4664 (b). A compromise and release does not constitute an "award of permanent disability".

However, where there is a prior claim and Compromise and Release even though there is no prior disability, the medical reports and other evidence may be "other factors". Under Labor Code section 4663 "other factors... including prior injuries" are a proper basis for apportionment. Here, the WCJ did not consider that.

The WCAB did indicate that you could rehabilitate yourself from a prior injury under section 4663, but not 4664.

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