

COMPENSATION NEWS

MONTHLY REPORT

Applicability of correct procedure in rehabilitation decision

This is an unpublished appeals court decision

This newsletter does not normally report on unpublished decisions. However, this case has some significance.

In this case the applicant had an admitted injury in 1996. The applicant returned to work in 1997. The applicant continued to work until the applicant resigned in 2001.

A physician issued a report saying the applicant was probably

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Enoch v. WCAB (Summit Logistics)

a qualified injured worker after the resignation.

The applicant notified the employer that he wished to receive vocational rehabilitation benefits in 2002. He also filed a cumulative trauma through the last day of employment.

Not having heard from the employer by 2004 the applicant filed a Request for Dispute Resolution. The employer did not respond to the request.

The Rehabilitation Unit of the Workers' Compensation Appeals Board (WCAB) issued a decision finding the applicant entitled to rehabilitation and awarded retroactive benefits at the "delay rate".

The employer appealed. However, the employer listed the wrong case number, incorrectly listing the cumulative trauma.

The applicant responded that the appeal lacked merit because the wrong case number was listed and the employer did not serve both the WCAB and the Rehabilitation Unit. The Workers' Compensation Judge (WCJ) agreed that the appeal was not properly filed.

On reconsideration the WCAB reversed the WCJ and stated a minor procedural error does not prevent reconsideration.

The appellate court concurred and indicated they would not strictly apply technical rules of procedure.

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