

COMPENSATION NEWS

MONTHLY REPORT

Request for rehabilitation was timely under Labor Code 5405.5

This is an unpublished appeals court decision

This newsletter does not normally report on unpublished decisions.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 parties stipulated to a specific injury occurring on August 30, 1996.

On May 17 2001, within 5 years from the date of injury, the applicant filed a "Petition to Reopen for New and Further Disability" (Petition to Reopen).

The petition was for

In this issue..

Fresno Unified School District v. WCAB (Butcher)

increased permanent, as well as, temporary disability. It did not include a request for vocational rehabilitation. On July 10 2002, nearly six years from the date of injury, the applicant amended the Petition to Reopen to include vocational rehabilitation.

The Rehabilitation Unit of the Workers' Compensation Appeals Board (WCAB) determined they no longer had jurisdiction. The applicant appealed the decision to the Workers' Compensation Judge (WCJ) who agreed, the request for rehabilitation, was not timely filed.

The applicant filed a petition for reconsideration and the WCAB overturned the WCJ decision finding the request was timely filed. The defendant then appealed to the appellate court.

The appellate court reviewed Labor Code section 5410 in regards to filing within five years from the date of injury. The court reviewed two appellate decisions that found that Labor

Code section 5405.5 extends the five years from the date of injury for the statute of limitations period. (Youngblood v. WCAB (1989) and Sanchez v WCAB (1990).

Since the applicant filed a timely petition to reopen the case, the subsequent amending of the application then related back to the original filing. Thus, even though the request was made after the five years in this case, the request was found to be timely.

=====
Editor: Harvey Brown
Firm: Samuelsen, Gonzalez, Valenzuela and Brown
Address: 18500 Von Karman #470, Irvine
Phone: 949 252-1300