

COMPENSATION NEWS

MONTHLY REPORT

Statute of Limitations decision on cumulative trauma injury

This is an unpublished appeals court decision

This newsletter does not normally report on unpublished decisions.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 began working for the employer in 1985. In 2002, the applicant started having symptoms of hypertension, headaches, and insomnia. The applicant attributed this to stress in the work place.

The applicant visited a physician and told the physician assistant of the work related problems. The applicant continued working and did not immediately report a claim for Workers' Compensation.

The applicant was subsequently demoted. The applicant believed he was going to have a nervous breakdown and resigned from the employer on September 10, 2004. On October 18, 2004 the applicant filed a claim form and Application for Adjudication.

The defendant declined to pay benefits because of the defense of the Statute of Limitations. The Workers' Compensation Judge (WCJ) heard the case on the issues of date of injury and the statute of limitations only. All other issues were deferred. The WCJ found against the defendant.

The defendant filed a petition for reconsideration. The Workers' Compensation Appeals Board (WCAB) denied the petition.

The appellate court reviewed Labor Code section 5412 to determine the date of injury for statute of limitations purposes. It looked at when the employment caused compensable disability. It cited previous cases stating that medical treatment alone, is not disability. However, it may be evidence of a compensable permanent disability. The question is not whether the applicant saw a doctor but whether there was a compensable disability.

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WCAB (Johnson)