

COMPENSATION NEWS

MONTHLY REPORT

NEW WORKERS COMPENSATION APPEALS BOARD DETERMINING THE PROPER SCHEDULE TO USE

This is a WCAB en banc decision

This is a significant en banc decision from the Workers' Compensation Appeals Board (WCAB).

Applicant sustained an admitted industrial injury in June of 2004. The defendant commenced paying temporary disability in June of 2004 and continued paying into 2005. The case went to trial on the primary issue of whether the rating

schedule of 1997 or the rating schedule of 2005 should be applicable to the applicants injury.

The Workers' Compensation Judge (WCJ) determined that the 2005 schedule should be applicable because none of the three exceptions enumerated in Labor Code section 4660 (d) were applicable.

The applicant filed a petition for reconsideration on the grounds the 1997 schedule should be applicable. The applicant alleged that the defendant was required under Labor Code section 4061 to send notice once the temporary disability payments commenced.

The WCAB reviewed this case and issued a split decision. Four members of the Board found that the 1997 rating

schedule was applicable, not the 2005 schedule. Three members dissented. This almost guarantees an appellate court review.

The majority concluded that the employer's duty to provide notice under Labor Code section 4061 arises with the first payment of temporary disability. They indicated this is an absolute duty. Thus, the 1997 Schedule applies to calculate applicant's permanent disability.

There is a strong dissent from three board members and this should certainly go up on appeal. There will probably be another newsletter on this issue.

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