

COMPENSATION NEWS

MONTHLY REPORT

Post termination/layoff case denying injury decided by appellate court

This is a non published appellate court decision

This is a significant decision from an appellate court, even though it is not certified for publication. It still cites cases that are certified and can be used.

The applicant worked for the employer as a ranch foreman until he was laid off. The applicant's primary language was Spanish, but he understood some English.

The applicant testified that before 2:00 pm he instructed the

office manager that he needed to see a doctor. He told the office manager he fell and he was uncertain she understood him. At 2:00 pm he was laid off by a Vice President. He did not tell the Vice President he had suffered an injury. Later that afternoon he went to the company physician.

The applicant then reported the injury the following week. The claim form was filled out after the claimant had been laid off. The applicant testified he reported the injury timely.

The case went to trial and the Workers' Compensation Judge (WCJ) found that the claim was not compensable under Labor Code section 3600 (a) (10). The WCJ indicated that the applicant failed to prove he notified the employer prior to lay off.

The applicant filed a petition for reconsideration and the Workers' Compensation Appeals

Board (WCAB) denied reconsideration. The applicant appealed.

The appellate court indicated the applicant failed to convince the WCJ by a preponderance of evidence that he reported the injury. The applicant then argued Labor Code 5403 mandates that the employer show prejudice in order for 3600 (a) (10) to apply. The appellate court disagreed and indicated 5403 does not apply to 3600 (A) (10). They indicated that 5403 does not apply to injury claims filed subsequent to an employee's notice of termination or layoff.

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In this issue..

Chavez v. WCAB, Modern Development Company