

COMPENSATION NEWS

MONTHLY REPORT

Court of Appeal addresses whether the old schedule can be used if not P&S

This is an appellate decision that was not published.

This is a significant decision involving interpretation of Labor Code section 4660, subdivision (d).

The applicant had an industrial injury and received temporary disability from May 2003 through June 2005. In October 2004, the applicant was seen by a physician that indicated that the applicant was permanent and stationary absent surgery. The applicant had surgery and was not declared permanent and

stationary until May 21, 2005.

The case went to trial over which permanent disability schedule was appropriate. Applicant contended the old schedule was appropriate and the defendant contended the new schedule using the American Medical Association Guides to the Evaluation of Permanent Disability was appropriate.

The Workers' Compensation Judge (WCJ) determined the old schedule was appropriate based on the report of October 2004. The defendant filed a petition for reconsideration and the Workers' Compensation Appeals Board (WCAB) concurred that the October 2004 report indicated the existence of permanent disability. Defendant file a writ which led to this appellate decision.

The court reviewed conflicting appellate decisions.

The court reviewed Genlyte Group LLC v. WCAB (2008) (Genlyte) which reached the same result as this court. They also reviewed Vera v WCAB (2007) (Vera) which reached a contrary result. This court indicated that a medical-legal report issued before January 1, 2005 need not state the applicant is permanent and stationary in order to trigger the old rating schedule.

Thus, with the split in appellate decisions this will likely be addressed by the California Supreme Court for final resolution.

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