

COMPENSATION NEWS

MONTHLY REPORT

Appellate Court finds an award for permanent disability for two separate injuries and overrules Wilkinson decision

This is a published Appellate Court decision that has major implications.

This is a very significant case for workers' compensation purposes. This case originated with an en banc decision from the Workers' Compensation Appeals Board (WCAB).

The applicant had an admitted specific injury. The

applicant also filed a cumulative trauma application in addition to the specific injury. The applicant was seen by an agreed medical examiner who found the applicant 62% permanently disabled. The doctor apportioned 50% to the specific and 50% to the cumulative trauma.

The workers' compensation judge (WCJ) issued a single award of 62 percent applying Wilkinson v. WCAB (1977). On petition for reconsideration the WCAB overturned the decision indicating SB 899 abrogated the Wilkinson doctrine and apportioned two separate awards of 31%.

The appellate court indicated that Wilkinson was based upon Labor Code section 4750.

SB899 repealed section 4750 and added new apportionment statutes 4663 and 4664. The court indicated the legislatures intent to adopt a new apportionment scheme inconsistent with Wilkinson.

The court did indicate that there may be limited circumstances when the physician cannot apportion between the injuries. In these limited circumstances then there would be one combined award. That was not the case here.

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Editor: Harvey Brown
Firm: Samuelsen, Gonzalez, Valenzuela and Brown
Address: 18881 Von Karman # 250 Irvine 92612
Phone: 949 252-1300

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