

**COMPENSATION NEWS**

MONTHLY REPORT

**THE WORKERS' COMPENSATION APPEALS BOARD (WCAB)  
HAS ISSUED AN EN BLANC DECISION IN OGILVIE**

*This is a En Banc decision of the WCAB after rehearing.*

**T**his is a very significant case for workers' compensation principles.

The applicant had a workers' compensation injury for which permanent disability was awarded. The original decision of the workers compensation judge (WCJ) was appealed and the

WCAB issued an en banc decision on Feb 3, 2009.

The WCAB upon petition issued a new opinion September 3, 2009. The opinion is long and needs to be analyzed in its entirety.

The prime rulings are that a permanent disability rating is rebuttable. The burden of rebutting lies with the person disputing the rating. One method is to challenge one of the components of the rating. This must be consistent with Labor Code section 4660 (b) (2). Any evidence presented must constitute substantial evidence.

The WCAB can still determine that the evidence does not overcome any diminished future earning capacity (DFEC). They conclude that the "prima facie evidence" rebuttable presumption is one affecting the burden of proof not the burden of producing evidence. There are various ways the schedule might be rebutted. The decision needs to be studied in its entirety and will likely be heard by the appellate court.

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COUNTY OF SAN FRANCISCO

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