

COMPENSATION NEWS

MONTHLY REPORT

Court of Appeal agrees with Costco decision in regard to PD rating schedule

This is an appellate decision that was published

This is a significant decision from the Third Appellate district.

The applicant had an admitted injury to his neck and back in July of 2004. The applicant was paid temporary disability from July 13, 2004 through March 24, 2005.

At the time of trial the applicant contended that the 1997 schedule for rating

permanent disabilities should be used for determining permanent disability. The defendants contended that the 2005 schedule should be used. The Workers' Compensation Judge (WCJ) determined the correct schedule was the 1997 schedule. Defendants petitioned for reconsideration. The Workers' Compensation Appeals Board (WCAB) denied the petition for reconsideration. The defendants filed this writ.

The appellate court reviewed Labor Code section 4660, subd. (B) (2) in regards to the effective date of the new rating schedule. The schedule went into effect on January 1, 2005. The appellate court also evaluated when Labor Code section 4061 notice was to be given.

The court then reviewed Pendergrass v Dugan Plumbing 1 and then Pendergrass v. Dugan

Plumbing 2. It then looked at Costco Wholesale Corp. V. WCAB and agreed with the Costco court that an employer "is required" to give notice under section 4061 within the meaning of 4660 (d) when the employer makes the last payment of temporary disability, not when the payments commence.

This court agreed with the Costco court's interpretation of section 4660 (d) and indicated the 2005 schedule should apply, not the 1997 schedule. The appellate court remanded to the WCAB for further action.

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