

COMPENSATION NEWS

MONTHLY REPORT

Workers' Compensation Appeals Board issues En Banc decision regarding testimony to rebut rating schedule

This is an en banc
decision of the
Workers'
Compensation
Appeals Board.

This case has significant impact. The applicant apparently had an admitted injury. The case was tried. The Workers' Compensation Judge (WCJ) found the applicant six per cent

permanently disabled. The applicant presented rebuttal evidence to the Permanent Disability Rating schedule (PDRS). This was done by using a vocational rehabilitation consultant.

The Workers' Compensation Appeals Board (WCAB) in this en banc decision indicated that the parties are allowed under Labor Code section 4600 to present rebuttal evidence to the PDRS. Nothing in SB899 changed that concept. Surprisingly, the Board cited *LeBoeuf V. WCAB*.

In addition, there was a further question of who would bear the cost of this testimony. The Board analyzed Labor Code section 5811 and determined that the cost may be assessed to the defendant.

However, before the cost can be assessed the person must qualify as an expert for their report and/or testimony to be admitted. They discuss what type of opinion the expert may present. They indicate that the testimony of a vocational rehabilitation counselor may address diminished earning capacity, however, the qualifications of each expert must be determined on a case by case basis. The cost of this under 5811 should be balanced against the result obtained.

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