

# COMPENSATION NEWS

MONTHLY REPORT

## Court of Appeal indicates temporary disability after five years from date of injury is not allowed

This is an appellate decision that was not published.

This is a significant decision involving interpretation of Labor Code section 4656.

The applicant incurred an admitted industrial injury in 1997. The applicant received temporary total disability (ttt) and was found permanent and stationary in 2002. The employer paid ttt until 2002 and then paid a vocational rehabilitation benefit until 2003.

In 2005 the physician indicated the applicant was ttd and performed lumbar surgery the next day. The employer denied ttd benefits on the grounds that five years had elapsed since the date of injury.

The issue went to trial and the Workers' Compensation Judge (WCJ) awarded ttd beginning in 2005. The WCJ also awarded a 5814 penalty of 25%. The employer petitioned for reconsideration. The Workers' Compensation Appeals Board (WCAB) affirmed the WCJ decision except on the issue of penalty.

The appellate court looked at the WCAB's right of continuing jurisdiction under Labor Code sections 5410, 5803 and 5804. The court looked at *Huston v. WCAB* (1979) 95 Cal. App. 3d 856 and *Nickelsberg v WCAB*

(1993) 12 Cal. App.4th 209 and differentiated both cases.

The court indicated ttd could be paid if there is a continuing award before the five years has run. However, if the five years has already expired and there is no continuing jurisdiction there is no additional ttd under Labor Code section 4656. In this case the ttd was reversed as well as the penalty, since the applicant had been permanent and stationary at the conclusion of the five years.

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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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