

COMPENSATION NEWS

MONTHLY REPORT

APPELLATE COURT FINDS WORKERS' COMPENSATION APPEALS BOARD RULING FINDING OF NO APPORTIONMENT WAS NOT SUBSTANTIAL EVIDENCE

This is a non published Appellate Court decision that restates previous law.

This is a very significant case for reestablishing existing workers' compensation principles.

The applicant worked in the laundry facility for the employer. The applicant was exposed to fumes and chemicals in the employment. The applicant had no history of breathing problems prior to working for the employer.

INSIDE THIS ISSUE:

CONTINENTAL CASUALTY VS. WCAB (GOODIN)

Symptoms of respiratory problems commenced during employment and progressed to where the applicant could no longer work.

The applicant filed a claim for a cumulative trauma and the only physician reporting found it industrial. The physician indicated the applicant was 100% disabled but apportioned 60% to non industrial causation.

The Workers' Compensation Judge (WCJ) found the case 100% industrial with no apportionment. The WCJ thought the apportionment was speculative. The Workers' Compensation Appeals Board (WCAB) agreed with the WCJ.

The appellate court reviewed existing case law. They reviewed "substantial evidence" and determined the WCAB did not use substantial evidence. Here the physician indicated there were two sets of factors contributing to the applicants current condition. They were both industrial and nonindustrial. This could not be ignored. If the WCAB questioned this they should have developed the record further under Labor Code section 5701. Therefore, the award was vacated.

Editor: Harvey Brown

Firm: Samuelson, Gonzalez, Valenzuela and Brown

Address: 18881 Von Karman #250, Irvine, CA 92612

Phone: 949-252-1300