

COMPENSATION NEWS

MONTHLY REPORT

Appellate Courts disagree on which rating schedule you must use to determine permanent disability

This is a non published Appellate Court decision further splitting opinion on the rating schedule.

This is another case in a sequence of cases trying to determine which rating schedule to use. This question will ultimately have to be determined by the California Supreme Court.

In this case the applicant had an admitted injury. The

In this issue..

Virginia Surety Company v
WCAB, Echelard

applicant did not become permanent and stationary before January 1, 2005. However, the applicant was seen by a physician who wrote a report December 20, 2004. Coupled with a deposition of the physician in 2007 it was determined that the applicant had permanent disability prior to January 1, 2005.

The Workers' Compensation Judge (WCJ) determined at trial the 1997 Permanent Disability Rating Schedule (PDRS) should be used and not the 2005 PDRS. The employer filed a Petition for Reconsideration and the Workers' Compensation Appeals Board (WCAB) sided with the WCJ. The employer filed a Writ.

This appellate court noted the divergence in appellate opinions. Specifically, they looked at Labor Code section 4600, subdivision (d). They looked at Vera v.

WCAB (2007) 154 Cal. App. 4th 996 that requires the applicant to be permanent and stationary prior to January 2005 to use the old schedule.

This court disagreed with that decision and followed the decision in Genlyte v. WCAB (Zavala) (2008) and Zenith Ins. V WCAB (2008) 159 Cal. App. 4th 705, which indicated the applicant did not need to be permanent and stationary , you only need the indication of permanent disability.

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