

# COMPENSATION NEWS

MONTHLY REPORT

## Appellate Court finds an award for permanent disability within the range of evidence is still good law

This is a non published Appellate Court decision that has major implications.

This is a very significant case for workers' compensation purposes. Even though this case is not published it cites published cases for principles that can be effectively utilized.

The applicant had an admitted specific injury. The applicant was seen by a primary treating physician who indicated

that the subjective complaints were "out of proportion" to the objective findings. The applicant was also seen by a qualified medical examiner who also did not detect any objective findings.

The case went to trial and the workers' compensation judge (WCJ) made an award of 28% permanent disability. The case then involved multiple petitions for reconsideration and finally ended with a new trial resulting in a 38% disability. This last time on reconsideration the Workers' Compensation Appeals Board (WCAB) reduced the award to 28% based on the range of evidence.

The appellate court then reviewed *U.S. Auto stores v. WCAB* (1971) 4 Cal. 3d 469 in which the Supreme Court indicated that the WCAB could make a finding with "the range of evidence".

The court then reiterated that the WCAB may rely on one physician for substantial evidence relying on *LaVesque V WCAB*. (1970) 1 Cal 3d 627. They indicated that even if this opinion is inconsistent with other opinions it may be substantial evidence *Place v. WCAB* (1970) 3 Cal 3d 372.

Thus, the old line of cases in regards to substantial evidence still appears viable.

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