

COMPENSATION NEWS

MONTHLY REPORT

Appellate Court finds apportionment for preexisting pathology and did not find age-based discrimination

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 and cumulative trauma injury. The applicant was seen by an agreed medical examiner (AME). The AME

determined that 20 percent of the applicant's disability was due to her preexisting pathology.

At trial the workers' compensation judge (WCJ) indicated that 20 percent of the applicant's disability was nonindustrial. The applicant presented a vocational rehabilitation expert at trial to indicate the applicant's loss of future earning capacity was 100 per cent.

The applicant filed a petition for reconsideration and the Workers' Compensation Appeals Board (WCAB) agreed with the WCJ.

The appellate court indicated the apportionment was not speculation. The applicant claimed that the

apportionment violated age based discrimination under Government Code section 11135. The appellate court indicated the apportionment was not based on age.

In addition the applicant tried to argue the applicant was 100 percent based on the LeBoef V. WCAB and this was disallowed.

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