

COMPENSATION NEWS

MONTHLY REPORT

THE COURT OF APPEAL ISSUED A NON PUBLISHED DECISION ON THE ISSUE OF WHICH RATING SCHEDULE TO USE

This is a non published Court of Appeal case

This is a very significant case for workers' compensation principles in that it discusses the current case law.

The applicant filed a cumulative trauma as a hockey player for the San Jose Sharks from 1997 to 2002. The applicant testified to numerous specific injuries and was on the employers injured reserve list

INSIDE THIS ISSUE:

NITTEL VS. WCAB, San Jose Sharks

almost every year. He was paid salary continuation.

The case was tried by a Workers' Compensation Judge (WCJ) and the applicant was found 100 per cent disabled. The WCJ found the 1997 permanent disability schedule applied because the case fell within one of the three exceptions to Labor Code section 4660 (d).

The employer petitioned for reconsideration and the Workers' Compensation Appeals Board reversed and found the 2005 rating schedule for rating permanent disabilities applied.

The appellate court reversed and indicated that the 1997 schedule applied because

the applicant received salary continuation, which triggered the need for the employer to give notice under Labor Code section 4061. The employers failure to do so triggered the exception under Labor Code section 4660 (d).

Editor: Harvey S. Brown

Firm: Samuelsen, Gonzalez, Valenzuela and Brown, LLP

Address:

**3501 Jamboree Road,
Suite 602, Newport Beach,
California 92660**

Phone: 949-252-1300