

COMPENSATION NEWS

MONTHLY REPORT

THE COURT OF APPEAL ISSUED A DECISION ON CALCULATION OF AVERAGE WEEKLY EARNINGS

This is a published Court of Appeal case

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

The applicant filed a claim for workers' compensation for a work related injury while working for the Boy Scouts of America.

He was paid minimum wage. He was also given living quarters and utilities at the employer's residence. In addition he received money for gas for his vehicle.

At trial before the Workers' Compensation Judge (WCJ) it was disputed whether Labor Code section 4454 required including the market value of the living quarters, utilities and car allowance. The WCJ determined the average weekly wage only at the minimum wage. The intent of the parties was to pay applicant at minimum wage so the WCJ did not include the value of the other items.

The applicant petitioned for reconsideration and the Workers' Compensation Appeals Board (WCAB) denied reconsideration.

The appellate court looked at section 4454 and analyzed lodging in exchange for services to the employer and

fuel as remuneration where the employer does not reimburse the applicant.

Here they determined the lodging, fuel and utilities were remuneration to the applicant and should have been considered in calculating the applicant's average weekly wage. The case was remanded to the WCAB to make the proper calculations.

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INSIDE THIS ISSUE:

Motheral v. WCAB and Golden Empire Council