

COMPENSATION NEWS

MONTHLY REPORT

THE COURT OF APPEAL ISSUED A PUBLISHED DECISION IN THE OGILVIE CASE

This is a 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 was injured in 2004. The applicant underwent knee replacement surgery in 2006. A physician recommended spinal surgery which applicant declined. The applicant never returned to work.

At trial the applicant rebutted the rating of the schedule on the basis of

diminished future earning capacity. The applicant used a vocational rehabilitation expert. The Workers' Compensation Judge (WCJ) agreed with the applicant and devised an alternative way to calculate applicants disability at a higher rate than the schedule.

The Workers' Compensation Appeals Board (WCAB) in an en banc decision indicated that the applicant could rebut the schedule and created a new methodology to rebut the schedule.

The appellate court concluded that an employee may challenge the presumptive schedule of permanent disability by showing a factual error in the calculation of a

factor in the rating formula or application of the formula, or by showing that the applicant is not amenable to rehabilitation and therefore has a greater disability than is shown in the rating schedule. The applicant can show the rating was incorrectly applied or the rating inadequate in light of the industrial injury. The case was reversed.

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