

PUBLICATION UPDATE

Route to: ☐ _____ ☐ _____ ☐ _____ ☐ _____
☐ _____ ☐ _____ ☐ _____ ☐ _____

California Law of Employee Injuries and Workers' Compensation

Publication 00270 Release 69

April 2009

HIGHLIGHTS

Legislation

- Legislative actions affecting workers' compensation have been added.

Administrative Regulations

- Changes made through Register 2008, No. 49 (12/5/2008) have been added.

Cases and Decisions

- Recent important case law is included.

EAMS Forms

- EAMS forms have been added to Appendix D.

LexisNexis Workers' Compensation Law Center

- Information about this exciting, interactive site on the free web is described below.

CALIFORNIA STATUTES

Firefighters and Peace Officers; Special Death Benefits. The legislature has amended Government Code Section 21537 to provide that the special death benefit is payable if the firefighter's or peace officer's death occurred from a single-event industrial injury that, based on competent medical opinion, rendered that person into a persistent vegetative state devoid of cognitive function at the time of injury until the time of death. [See Ch. 3 § 3.115[1].]

FEDERAL STATUTES

Americans With Disabilities Act. In the ADA Amendments Act of 2008, Congress has broadened the statute's coverage by means of rejecting various U.S. Supreme Court decisions that had interpreted it. [See Ch. 35 § 35.102[2][a]-[c][ii], [f].]

CALIFORNIA REGULATIONS

Workers' Compensation Judges; Ethi-

cal Standards. In amending 8 Cal. Code Reg. §§ 9720.1-9723, the Administrative Director has updated the regulations governing the ethical standards to which Workers' Compensation Judges must adhere. [See Ch. 1, § 1.11[3][b].]

Rules of Court Administrator. In promulgating 8 Cal. Code Reg. §§ 10210-10297, the Administrative Director and Court Administrator have specified various procedures, including those for EAMS, the Electronic Adjudication Management System, being implemented by the Division of Workers' Compensation. [See Chs. 1, 7, 22, 23, 24, 25, 26, 33, 35.]

Workers' Compensation Appeals Board Rules of Practice and Procedure. The W.C.A.B. has amended various of its rules of procedure (8 Cal. Code Reg. §§ 10300-10999) to take account of the advent of the Rules of the Court Administrator and the implementation of the Electronic Adjudication Management System (EAMS). [See Chs. 1, 10, 20, 22, 23, 25, 30, 31.]

Disability Evaluation Unit Regulations. In promulgating new regulations and amending existing regulations, the Administrative Director has conformed the Disability Evaluation Unit regulations, 8 Cal. Code Reg. §§ 10150-10168, to the requirements of document filing with the Electronic Adjudication Management System (EAMS). [See Ch. 32, §§ 32.01[4][a]-[d], 32.05[3][b][i], [ii].]

Retraining and Return to Work Regulations. In promulgating new regulations and amending existing regulations, the Administrative Director has conformed the retraining and return to work regulations, 8 Cal. Code Reg. §§ 10116-10133.58, to the requirements of document filing with the Electronic Adjudication Management System (EAMS) and enabled the same definitions to apply to both the return to work and

the supplemental job displacement regulations. [See Ch. 7, § 7.02[3][d][i]-[vii]; Ch. 35, § 35.05[4][b][i]-[iii].]

PRACTICE POINT ON GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008

A Practice Point has been included discussing issues raised by the developing technology of so-called genetic profiling and the response to those issues embodied in the federal Genetic Information Nondiscrimination Act of 2008 and California law. [See Ch. 8, § 8.06[4].]

CALIFORNIA CASES

Temporary Disability; Industrial Disability Leave; Two-Year Limitation on Temporary Disability Indemnity. The court of appeal in *Brooks v. W.C.A.B.* (2008) 161 Cal. App. 4th 1522, has held that the one year of industrial disability leave payable to state employees under Government Code Sections 19869-19877.1 falls within the ambit of the two-year limitation on aggregate temporary disability payments in Labor Code Section 4656(c)(1). [See Ch. 7, § 7.02[1].]

Temporary Disability; Multiple Injuries; Time Limits on Payments. The court of appeal in *Foster v. W.C.A.B.* (2008) 161 Cal. App. 4th 1505, has held that, when independent injuries result in concurrent periods of temporary disability, the 104-week, two-year limitation of Labor Code Section 4656(c)(1) likewise runs concurrently. [See Ch. 7, § 7.02[1].]

Injury AOE/COE; Off-Duty Athletic Activities. The court of appeal in *Tomlin v. W.C.A.B.* (2008) 162 Cal. App. 4th 1423, has held that a police officer's physical training injury, even though occurring while he was on vacation, was a compensable injury because his training was, pursuant to Labor Code Section 3600(a)(9), "a reasonable expectancy of . . . the employ-

ment.” [See Ch. 4, § 4.25[3][c].]

Employment Relationships; Newspaper Carriers. The court of appeal in *Antelope Valley Press v. Steve Poizner as Insurance Commissioner* (2008) 162 Cal. App. 4th 839, has held that the administrative record supported the conclusion that newspaper carriers were employees for purposes of the workers’ compensation law, not independent contractors. [See Ch. 3, § 3.06[2].]

Costs; Vocational Rehabilitation Experts. The court of appeal in *Barr v. W.C.A.B.* (2008) 164 Cal. App. 4th 163, has held that the has discretion to award costs, pursuant to Labor Code Section 5811, for a vocational rehabilitation expert’s report, regardless of whether the report is admissible. [See Ch. 27, § 27.01[8][a].]

Statute of Limitations; Tolling; Estoppel. The court of appeal in *California Insurance Guarantee Association v. W.C.A.B. (Carls)* (2008) 163 Cal. App. 4th 853, has held that CIGA failed to meet its burden to prove that an employee gained actual knowledge of his potential eligibility for workers’ compensation benefits for a 1997 injury more than one year prior to filing his claim. [See Ch. 24, § 24.04[6].]

Medical Treatment; Utilization Review; Objections to Medical Determination. The California Supreme Court in *State Compensation Insurance Fund v. W.C.A.B. (Sandhagen)* (2008) 44 Cal. 4th 230, has held that, when deciding whether to approve or deny an injured employee’s request for medical treatment, the employer must conduct utilization review pursuant to Labor Code Section 4610 and that the employer may not, as an alternative to utilization review, elect to dispute the request for medical treatment pursuant to Labor Code Section 4062. [See Ch. 22, §§

22.05[6][c][iii], 22.06[2][a].]

Medical Treatment; Chiropractic Treatment Limits; Constitutionality. The court of appeal in *Facundo-Guerrero v. W.C.A.B.* (2008) 163 Cal. App. 4th 640, has upheld the constitutionality of Labor Code Section 4604.5(d)’s limitation to 24 chiropractic treatment visits per industrial injury occurring on or after January 1, 2004. [See Ch. 5, § 5.02[3A]; Ch. 30, § 30.04[4][e][iv].]

Wrongful Termination; Retaliation. The court of appeal in *Arteaga v. Brink’s, Inc.* (2008) 163 Cal. App. 4th 327, has held that an employee’s claim alleging wrongful termination in retaliation for filing a workers’ compensation claim failed because the employer terminated the employee’s employment for a legitimate, nondiscriminatory reason, i.e., management’s loss of confidence in the employee. [See Ch. 10, § 10.11[2][a].]

Fair Employment and Housing Act; Discrimination; Physical Disability. The Court of Appeal in *Arteaga v. Brink’s, Inc.* (2008) 163 Cal. App. 4th 327, has held that the plaintiff’s Fair Employment and Housing Act claim alleging disability discrimination failed because the plaintiff’s symptoms did not constitute a “physical disability” under the statute since they did not make it difficult for him to achieve the life activity of working and because his employer terminated his employment for a legitimate, nondiscriminatory reason, i.e., management lost confidence in him. [See Ch. 10, § 10.70[3][a][ii].]

Third Party Actions; Hirer’s Liability; Retained Control. The court of appeal in *McCarty v. State of California/Department of Transportation* (2008) 164 Cal. App. 4th 955, has held that Government Code Section 815.4 provided a statutory basis for a public entity potentially to be held liable on

a retained control theory under Hooker and its progeny and that the plaintiff could bring a claim on this theory. [See Ch. 3, § 3.133.]

Third Party Actions; Settlement; Insurer's Credit Rights. The U.S. Court of Appeals, Ninth Circuit, in *Travelers Property Casualty Co. v. ConocoPhillips Co.* (2008) 546 F.3d 1142, has held that an insured employer's waiver of its right to credit against future workers' compensation benefits, granted by Labor Code Section 3600(b), as part of the settlement of employees' civil lawsuits against the employer, did not breach provisions of the policy between the employer and its workers' compensation insurer. [See Ch. 2, § 2.72[2]; Ch. 11, § 11.42[5][e].]

Uninsured Employers Benefits Trust Fund; Sanctions. The court of appeal in *Duncan v. W.C.A.B. (Silva)* (2008) 166 Cal. App. 4th 294, has held that the limitation of liability specified by Labor Code Section 3716.2 precludes imposition of a sanction against the UEBTF pursuant to Labor Code Section 5813 for bad-faith actions or tactics that are frivolous or intended solely to cause unnecessary delay. [See Ch. 1, § 1.121; Ch. 10, § 10.40[1].]

Negligence; Duty of Care; Negligence Per Se; Moving or Operating Equipment Near Power Lines. The Supreme Court in *Ramirez v. Nelson* (2008) 44 Cal. 4th 908, has held that homeowners neither had nor breached any statutory duty of care owed to a deceased worker under Penal Code Section 385(b), which provides that "[a]ny person who either personally or through an employee or agent, or as an employee or agent of another, operates . . . or moves any tools . . . [or] equipment . . . within six feet of a high voltage overhead conductor is guilty of a misdemeanor." [See Ch. 3, § 3.134.]

Discrimination; Labor Code Section 4850; Labor Code Section 132a. The court of appeal in *Los Angeles County Professional Peace Officers' Association v. County of Los Angeles* (2008) 165 Cal. App. 4th 63, has held that an employer's policy regarding "cash out" payments of excess accumulated vacation hours to sheriff's deputies who were not on Labor Code Section 4850 leave as a result of injuries AOE/COE, as opposed to its policy regarding such payments to deputies who were on such leave, discriminated against the latter group in violation of Labor Code Sections 4850 and 132a. [See Ch. 3, § 3.114[2].]

Permanent Disability; Apportionment; Presumptions of Industrial Causation. The court of appeal in *Department of Corrections and Rehabilitation v. W.C.A.B. (Alexander)* (2008) 166 Cal. App. 4th 911, has held that Labor Code Section 4663, as enacted in 2004 by SB 899, did not repeal the non-attribution presumptions of Labor Code Sections 3212–3213.2, and that the non-apportionability of permanent disability awards made pursuant to those statutes has been law since that 2004 enactment of Labor Code Section 4663, making non-apportionability applicable to the entirety of an employee's permanent disability compensation that he began to receive in 2006. [See Ch. 3, § 3.113[1], [4][f].]

Vocational Rehabilitation; Vocational Rehabilitation Maintenance Allowance; Credit. The court of appeal in *Medrano v. W.C.A.B.* (2008) 167 Cal. App. 4th 56, has held that VRMA is not a wage replacement benefit such as TD or VRTD, and that, therefore, no credit is allowed against VRMA payments for wages earned during the same period when the employee was receiving such payments. [See Ch. 35, § 35.11[1], [3].]

WCAB EN BANC OPINIONS

Permanent disability; Rating Under 2005 Permanent Disability Rating Schedule; Costs. The Appeals Board en banc in *Costa v. Hardy Diagnostic* (2007) 72 Cal. Comp. Cases 1492 (Appeals Board en banc opinion) has held that a vocational rehabilitation consultant may be an appropriate expert witness on the topic of diminished future earning capacity to present evidence on or in rebuttal to a permanent disability rating under the 2005 Permanent Disability Rating Schedule. [See Ch. 8, § 8.02[4][a]; Ch. 27, § 27.01[8][a].]

Permanent Disability; Validity of 2005 Permanent Disability Rating Schedule. The Appeals Board en banc in *Boughner v. Comp USA* (2008) 73 Cal. Comp. Cases 854 (Appeals Board en banc opinion) has held that an employee did not carry his burden of demonstrating that adoption of the 2005 Permanent Disability Rating Schedule by the Administrative Director was arbitrary and capricious or inconsistent with Labor Code Section 4660(b)(2). [See Ch. 8, § 8.02[4][a]; Ch. 32, § 32.03A[1].]

Permanent Disability; Apportionment; Wilkinson Rule. The Appeals Board en banc has held in *Benson v. Permanente Medical Group* (2007) 72 Cal. Comp. Cases 1620 (Appeals Board en banc opinion) that the rule established by *Wilkinson v. W.C.A.B.*, which provided that an injured worker, while employed by the same employer, who sustained two separate injuries to the same part of the body, which became permanent and stationary at the same time, was entitled to receive a combined award of permanent disability, is no longer generally applicable because inconsistent with the post-SB 899 requirement that apportionment be based on causation. [See Ch. 8, § 8.07[2][d][ii].]

Attorneys; Appearance by Disbarred

or Suspended Attorneys. The Appeals Board en banc has held in *In Re Matter of Pellicer* (2008) 73 Cal. Comp. Cases 1065 (Appeals Board en banc opinion) that an attorney who has been disbarred, suspended, or involuntarily enrolled as an inactive State Bar member, or who has resigned while disciplinary action was pending, is not permitted to appear in workers' compensation proceedings, not even as a non-attorney hearing representative. [See Ch. 20, § 20.01[1][b].]

Penalties; Unreasonable Delay in Payment of Benefits; Amount of Penalty. The Appeals Board en banc has held in *Ramirez v. Drive Financial Services* (2008) 73 Cal. Comp. Cases 1324 (Appeals Board en banc opinion) that the overriding consideration in determining what penalty amount to assess should be whether the penalty imposed would serve the purposes sought to be accomplished by Labor Code Section 5814, which are both penal and remedial. [See Ch. 10, § 10.40[1].]

Penalties; Unreasonable Delay in Payment of Benefits; Successive Penalty. The Appeals Board en banc has held in *Ramirez v. Drive Financial Services* (2008) 73 Cal. Comp. Cases 1324 (Appeals Board en banc opinion) that, although, under Labor Code Section 5814(a), a successive penalty may be awarded for an unreasonable delay in making a prior penalty payment, it should not be awarded when the employer had genuine doubt as to its liability or when there has been no legally significant intervening event. [See Ch. 10, § 10.40[5].]

Penalties; Unreasonable Delay in Payment of Benefits; Attorney's Fees. The Appeals Board en banc has held in *Ramirez v. Drive Financial Services* (2008) 73 Cal. Comp. Cases 1324 (Appeals Board en banc opinion) that, if an unreasonable delay in payment of the award of compensation

occurs, Labor Code Section 5814.5 entitles an employee's attorney to receive fees for enforcing the award, and such fees are to be based on a reasonable number of hours expended and a reasonable hourly rate and are to be awarded in addition to the penalty awarded to the employee under Labor Code Section 5814(a), not as a percentage of that penalty. [See Ch. 10, § 10.42; Ch. 20, § 20.02[2][g].]

Medical Liens; Proof of Claim; Evidence. The Appeals Board en banc has held in *Tapia v. Skill Master Staffing* (2008) 73 Cal. Comp. Cases 1338 (Appeals Board en banc opinion) that, pursuant to *Kunz v. Patterson Floor Coverings, Inc.*, an outpatient surgery center lien claimant (or any medical lien claimant) has the burden of proving that its charges are reasonable, and that the outpatient surgery center lien claimant's billing, by itself, does not establish that the claimed fee is reasonable, so that, even in the absence of rebuttal evidence, a lien need not be allowed in full if unreasonable on its face. [See Ch. 30, § 30.04[12][c][ii].]

WCAB PANEL DECISIONS

CAUTION: *The panel decisions cited below have not been designated "significant panel decisions" by the Workers' Compensation Appeals Board. Practitioners should proceed with caution when citing to these panel decisions and should also verify the subsequent history of these decisions. WCAB panel decisions are citable authority, particularly on issues of contemporaneous administrative construction of statutory language [see Griffin v. WCAB (1989) 209 Cal. App. 3d 1260, 1264, fn. 2, 54 Cal. Comp. Cases 145]. However, WCAB panel decisions are not binding precedent, as are en banc decisions, on all other Appeals Board panels and workers' compensation judges [see Gee v. Workers' Comp. Appeals Bd. (2002) 96*

Cal. App. 4th 1418, 1425 fn. 6, 67 Cal. Comp. Cases 236].

Death Benefits; Dependency Benefits.

The Appeals Board, in a Panel Decision, has held in *Villemaire v. Campbell Soup Co.*, 2008 Cal. Wrk. Comp. P.D. LEXIS 270 (Appeals Board panel decision) that benefits due to a decedent's minor dependents are to be calculated by determining the decedent's average weekly wages for the time during which he would have been temporarily disabled following surgery from which he did not in fact recover. [See Ch. 9, § 9.02[5].]

Petitions to Reopen; New and Further Disability; Apportionment.

The Appeals Board, in a Panel Decision, has held in *Esparza v. City of Los Angeles*, 2008 Cal. Wrk. Comp. P.D. LEXIS 410 (Appeals Board panel decision) that apportionment pursuant to *Brodie v. W.C.A.B.* does not apply to an award of new and further disability after reopening pursuant to Labor Code Section 5410. [See Ch. 8, § 8.05[1]; Ch. 31, § 31.05[2].]

Petitions to Reopen; Good Cause;

Change in Law. The Appeals Board, in a Panel Decision, has held in *Dykes v. E & J Gallo Winery*, 2008 Cal. Wrk. Comp. P.D. LEXIS 540 (Appeals Board panel decision) that neither the doctrine of res judicata nor the law of the case doctrine was a bar to the Appeals Board's power to reopen for good cause under Labor Code Sections 5803 and 5804 when, subsequent to the court of appeal's decision in the present case, the Supreme Court announced a contrary rule in a different case, and that the change of law enunciated by the Supreme Court in *Brodie v. W.C.A.B.* constituted good cause to reopen the original decision in the present case. [See Ch. 8, § 8.07[2][d][i]; Ch. 31, § 31.04[2][e].]

Alternative Dispute Resolution;

WCAB Jurisdiction, Sanctions. The Appeals Board, in a Panel Decision, in *Albertson v. Collins Electric*, 2008 Cal. Wrk. Comp. P.D. LEXIS 402 (Appeals Board panel decision) has denied an insurer's petition for reconsideration and sanctioned the insurer \$2,500, pursuant to Labor Code Section 5813, for having failed to appear at a status conference or to provide advice prior to the conference as to why it would not appear, when the Board found that the insurer presented no good cause for this failure, and that the fact that, 11 days after the conference date, the insurer filed a motion for dismissal on the grounds that the Board lacked jurisdiction, since the claim was proceeding through alternative dispute resolution pursuant to Labor Code Section 3201.5, was no justification for the insurer's failure to appear at the conference. [See Ch. 1, § 1.04[1].]

Medical Provider Networks; Medical Disputes. The Appeals Board, in a Panel Decision, has held in *Baessler v. National Association of Music Merchants*, 2008 Cal. Wrk. Comp. P.D. LEXIS 403 (Appeals Board panel decision) that an employer with a medical provider network, who declared a medical dispute with the findings of the employee's treating physician who was member of that network, was not entitled to an order compelling the employee to attend a QME exam because it failed to follow the procedures provided by Labor Code Sections 4062 and 4062.2. [See Ch. 22, § 22.06[1][a].]

Stipulations With Request for Award; Permanent Disability; Offer of Regular Work. The Appeals Board, in a Panel Decision, has held in *Brown v. County of San Mateo*, 2008 Cal. Wrk. Comp. P.D. LEXIS 425 (Appeals Board panel decision) that the parties were bound by stipulations, drafted by the employer, that provided for one-percent permanent disability payable at

\$230 per week in a total amount of \$690, and that there would then be a Labor Code Section 4658(d) adjustment lowering the permanent disability rate to \$195.50, when the Board found that the employee returned to her regular work six months later, that a formal offer of regular work that the employer filed with stipulations was served, two months after she returned to work, and that the stipulations were filed, almost five months after that, so that the employer was not entitled to a 15-percent decrease in permanent disability paid to the employee. [See Ch. 7, § 7.02[3][d][vi].]

Temporary Disability; Limitations on Temporary Disability Payments; Notice. The Appeals Board, in a Panel Decision, has held in *Medina v. Utility Tree Services, Inc.*, 2008 Cal. Wrk. Comp. P.D. LEXIS 435 (Appeals Board panel decision) that the employer was not required to notify the employee in advance of the possible application of the limitation imposed by Labor Code Section 4656, which applied as a matter of law, and that the notice required by 8 Cal. Comp. Reg. § 9812 was not connected to the limitation set forth in Labor Code Section 4656(c)(1). [See Ch. 7, § 7.02[1].]

Permanent Disability; Apportionment; Substantial Evidence. The Appeals Board, in a Panel Decision, has held in *Burton v. Pitney Bowes*, 2008 Cal. Wrk. Comp. P.D. LEXIS 510 (Appeals Board panel decision) that the AME's use of the word "probably" in giving an opinion regarding apportionment of the employee's permanent disability between cumulative trauma injury AOE/COE and a pre-existing condition constituted an opinion stated with "reasonable medical probability," which in turn constituted substantial evidence. [See Ch. 8, § 8.05[2][a].]

Permanent Disability; 15-Percent In-

crease; Termination for Cause. The Appeals Board, in a Panel Decision, has held in *Jackson v. City of Los Angeles Police Department*, 2008 Cal. Wrk. Comp. P.D. LEXIS 550 (Appeals Board panel decision) that the employer did not sustain its burden of proving that it terminated the employee for cause and was not required to comply with the notice requirement of Labor Code Section 4658(d)(2), so the employee was entitled to a 15-percent increase in permanent disability. [See Ch. 32, § 32.04[3][a].]

Permanent Disability; Substantial Evidence; Sleep Disturbance. The Appeals Board, in a Panel Decision, has held in *Peterson v. State of California, Department of Mental Health*, 2008 Cal. Wrk. Comp. P.D. LEXIS 558 (Appeals Board panel decision) that the AMA Guides mandate that diagnosis of excessive daytime sleepiness be supported by formal studies in a sleep laboratory, that no such study had been performed in the present case, and that, in the absence of such a formal study, there was not substantial medical evidence regarding whether the nature of the employee's injury included sleep disturbance. [See Ch. 8, § 8.02[3]; Ch. 32, § 32.02[2][a].]

Cumulative Trauma Injury; Apportionment. The Appeals Board, in a Panel Decision, has held in *Carranza v. Safeway*, 2008 Cal. Wrk. Comp. P.D. LEXIS 571 (Appeals Board panel decision) that 80 percent of the employee's disability was attributable to her employment by two employers prior to her one-year break in employment before working for two other employers, to which the remaining 20 percent of her disability was attributable, and that during the one-year break the employee had permanent disability but was not permanent and stationary and, thus, neither ratable nor compensable, so that the last employer was the party found liable

under Labor Code Section 5500.5. [See Ch. 8, § 8.06[2]; Ch. 31, § 31.13[2][c].]

Medical Treatment; Qualified Medical Evaluators Panel. The Appeals Board, in a Panel Decision, has held in *Valencia v. Taylor Fresh Foods*, 2008 Cal. Wrk. Comp. P.D. LEXIS 596 (Appeals Board panel decision) that the report of a panel QME is admissible evidence even if it is determined that the employee did not comply with the Labor Code Section 4062.1(c) time requirement for notifying the employer of selection of the QME from the panel. [See Ch. 22, § 22.06[1][b]; Ch. 32, § 32.06[2][b].]

UNPUBLISHED COURT OF APPEAL CASES

CAUTION: *The following court of appeal cases were not certified for publication. Practitioners should proceed with caution when citing to these unpublished cases and should also verify the subsequent history of these cases.*

Cumulative Trauma Injuries; Statute of Limitations; Heart Condition. The court of appeal in *City of Santa Ana v. W.C.A.B. (Smith)* 73 Cal. Comp. Cases 460 (court of appeal opinion not published in official reports) has held that the workers' compensation claim based on coronary heart disease of a firefighter who retired in 1991 as a result of a job-related orthopedic disability was not time barred, even though he had suffered chest pains since the early 1990's, since a conventional heart test conducted at that time did not disclose any heart problem and it was not until 2003 that a diagnostic screening test showed an elevated calcium level in his coronary artery and he was diagnosed with coronary heart disease. [See Ch. 24, § 24.03[7][b].]

Cumulative Trauma Injuries; Statute of Limitations; Skin Cancer. The court of appeal in *City of Santa Ana v. W.C.A.B. (Smith)* 73 Cal. Comp. Cases 460 (court of

appeal opinion not published in official reports) has held that the 2003 workers' compensation claim based on cumulative trauma injury in the form of skin cancer of a firefighter, who spent five to seven hours per day under the sun while employed, was time barred on the grounds that the firefighter knew or reasonably should have known that his skin cancer was work related. [See Ch. 24, § 24.03[7][b].]

Cumulative Trauma Injuries; Statute of Limitations. The court of appeal in *The Earthgrains Company v. W.C.A.B.* (Hansen) (2008) 73 Cal. Comp. Cases 1000 (court of appeal opinion not published in official reports) has held that an employee's application for adjudication of his cumulative trauma claim was timely filed in 2005 when it found that the employee alleged a cumulative trauma injury from August 1988 to June 2002 and that the employee testified without rebuttal that he had never heard the term "cumulative trauma" before going to his attorney's office in 2005. [See Ch. 24, § 24.03[7][b].]

WCAB Jurisdiction; Continuing Jurisdiction; Permanent Disability; Application of 2005 Permanent Disability Rating Schedule. The court of appeal in *Burnham v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 579 (court of appeal opinion not published in official reports) has held that a change in the law resulting from the Appeals Board's rescission of its first en banc opinion in *Pendergrass v. Duggan Plumbing* and its issuance of its second en banc opinion in that case constituted good cause sufficient to invoke Labor Code Section 5803. [See Ch. 31, § 31.04[2][a].]

WCAB Jurisdiction; Continuing Jurisdiction. The court of appeal in *Clark v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 587 (court of appeal opinion not published in official reports) has denied an employee's

petition for writ of review and ordered her to pay the employer's attorney's fees incurred in defending the meritless petition for writ of review. [See Ch. 34, § 34.23.]

WCAB Continuing Jurisdiction; Stipulations; Awards; Temporary Total Disability. The court of appeal in *Los Angeles County Department of Parks and Recreation v. W.C.A.B.* (Calvillo) (2008) 73 Cal. Comp. Cases 798 (court of appeal opinion not published in official reports) has held that, because in 1998 and 1999 stipulated issues were expressly reserved for trial, the stipulation, the order to comply, and the payment of temporary total disability resulted in an interim, not in an executed or a formal, award, so that no petition for continuing jurisdiction under Labor Code Sections 5410 or 5803 and 5804 was required to give the Appeals Board jurisdiction when it made an award of temporary total disability in 2006, but that the Appeals Board's award of temporary total disability more than five years from the date of injury was precluded pursuant to Labor Code Section 4656 and *Nickelsberg v. W.C.A.B.* [See Ch. 31, §§ 31.02, 31.04[1][d], 31.05[3].]

Temporary Disability; Industrial Disability Leave; Two-Year Limitation on Temporary Disability Indemnity. The court of appeal in *Wiley v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 604 (court of appeal opinion not published in official reports) has held that one year of enhanced industrial disability leave payable to state employees under Government Code Sections 19869–19877.1 falls within the ambit of the two-year limitation on aggregate temporary disability payments in Labor Code Section 4656(c)(1). [See Ch. 7, § 7.02[1].]

Temporary Disability; Substantial Evidence. The court of appeal in *The*

Earthgrains Company v. W.C.A.B. (Hansen) (2008) 73 Cal. Comp. Cases 1000 (court of appeal opinion not published in official reports) has held that the Appeals Board's determination that an employee's retirement was necessitated because of his industrial injuries and related surgical procedures was supported by uncontroverted evidence, entitling the employee to temporary disability benefits. [See Ch. 7, § 7.01[1].]

Temporary Disability; Two-Year Limitation on Temporary Disability Indemnity; Education Code § 44043 Payments. The court of appeal in Mt. Diablo Unified School District v. W.C.A.B. (Rollick) (2003) 165 Cal. App. 4th 1154, has held that, for purposes of determining the two-year limitation period on temporary disability indemnity, temporary disability payments commenced when a school district paid its injured employee her normal wages under Education Code Section 44043. [See Ch. 7, §§ 7.02[1], 7.04[2].]

Permanent Disability; Apportionment; Substantial Evidence. The court of appeal in Mills v. W.C.A.B. (2008) 73 Cal. Comp. Cases 812 (court of appeal opinion not published in official reports) has held that the amendments to the apportionment statutes by SB 899 eliminated employer liability for the "lighting up" of a pre-existing non-disabling condition or impairment. [See Ch. 4, § 4.93; Ch. 8, § 8.06[1].]

Permanent Disability; Application of 2005 Permanent Disability Rating Schedule; Exceptions. The court of appeal in Payless Shoe Source v. W.C.A.B. (Dale-rio) (2008) 73 Cal. Comp. Cases 1018 (court of appeal opinion not published in official reports) has held that the Appeals Board may not look to evidence prepared in 2005 to establish that the employer, unaware of the employee's medical condition,

was required to send the employee a Labor Code Section 4061 temporary disability benefit termination notice before 2005 so as to trigger use of 1997 Schedule for Rating Permanent Disabilities. [See Ch. 8, § 8.02[4][a].]

Permanent Disability; Apportionment; Burden of Proof. The court of appeal in E & J Gallo Winery v. W.C.A.B. (Rubio) (2008) 73 Cal. Comp. Cases 1206 (court of appeal opinion not published in official reports) has held that the employer did not meet its burden of proving that the employee's permanent disability award should have been apportioned to a prior injury, since the employer bears the burden of proving the existence of a prior permanent disability award and the extent of overlap between the prior and the current disabilities, and there was no evidence in the record that the employee had received a prior permanent disability award. [See Ch. 8, §§ 8.05[3], 8.06[5][d], 8.07[2][c].]

Permanent Disability; Rating; Application of 1997 Schedule for Rating Permanent Disabilities. The court of appeal in Virginia Surety Co. v. W.C.A.B. (Echelard) (2008) 73 Cal. Comp. Cases 1218 (court of appeal opinion not published in official reports) has, in addition to rejecting Vera and following Genlyte and Zenith to hold that a pre-2005 treating physician's report need not state that the employee has reached permanent and stationary status in order to indicate the existence of permanent disability, held that the treating physician's 2007 deposition's explanation of the words of his 2004 report could be considered in determining the meaning of the 2004 report. [See Ch. 8, § 8.02[4][a].]

Permanent Disability; Rating; Application of 1997 Schedule for Rating Permanent Disabilities. The court of appeal in Service Rock Products v. W.C.A.B. (Mar-

quis) (2008) 73 Cal. Comp. Cases 1307 (court of appeal opinion not published in official reports) has held that the 1997 Schedule for Rating Permanent Disabilities applied when an employee received temporary disability benefits from April 2004, in September 2004 the employer discontinued paying temporary disability benefits and issued a Labor Code Section 4061 notice based on the employee's release to return to work, and the employee worked a few weeks until placed back on temporary disability and received additional temporary disability benefits from November 2004 through at least January 2005. [See Ch. 8, § 8.02[4][a].]

Permanent Disability; Rating; Application of 1997 Schedule for Rating Permanent Disabilities. The court of appeal in *City of Fresno v. W.C.A.B. (Wilson)* 73 Cal. Comp. Cases 1401 (court of appeal opinion not published in official reports) has held that a treating physician's 2004 report constituted substantial evidence of permanent disability by stating that the employee "will probably have a disability precluding heavy lifting and repetitive bending and stooping. I do not think she will be able to return to her usual job and vocational retraining should be considered." [See Ch. 8, § 8.02[4][a].]

Employment Relationships; Partnership. The court of appeal in *Ramirez v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 1302 (court of appeal opinion not published in official reports) has held that a widow's deceased husband was not an employee at the time of the injury that resulted in his death, but was rather a working member of a partnership, so that the widow was not eligible for workers' compensation decedent benefits. [See Ch. 3, § 3.34.]

WCAB DECISIONS DENIED WRIT OF REVIEW

CAUTION: *The following entries are "writ denied" cases. Practitioners should proceed with caution when citing to these cases and should also verify the subsequent history of these cases.*

Permanent Disability; Application of 1997 Schedule for Rating Permanent Disabilities; Stipulations. The Appeals Board in *AT&T Broadband v. American Protection Insurance Co.* (2008) 73 Cal. Comp. Cases 381 (writ denied) has held that the decision in *Vera v. W.C.A.B.*, requiring an employee to be permanent and stationary prior to 2005 for the 1997 Schedule for Rating Permanent Disabilities to apply, did not represent a change of law for the purpose of relieving the employer of its stipulation that the 1997 Schedule applied to rate the permanent disability stemming from an employee's 2001 industrial injuries. [See Ch. 8, § 8.02[4][a].]

Permanent Disability; Application of 1997 Schedule for Rating Permanent Disabilities. The Appeals Board in *City of Daly City v. W.C.A.B. (Baldwin)* (2008) 73 Cal. Comp. Cases 1078 (writ denied) has held that Labor Code Section 4850 salary continuation benefits were the equivalent of temporary disability indemnity for the purpose of Labor Code Section 4061 notice requirements, so that the employer was required to give the employee notice regarding permanent disability benefits when it stopped paying Labor Code Section 4850 benefits in 2004, thereby triggering, pursuant to Labor Code Section 4660(d), use of the 1997 Schedule for Rating Permanent Disabilities. [See Ch. 8, § 8.02[4][a].]

Permanent Disability; Apportion-

ment; Overlap. The Appeals Board in *Phillips v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 402 (writ denied) has held that an employer met its burden under *Kopping v. W.C.A.B.* of proving that the permanent disability following an employee's 2000 left leg/peroneal nerve injury was overlapped by the employee's prior 1987 permanent disability award for a right knee injury, rejecting the contention that the disability caused by the employee's 2000 injury existed in a different body part from the prior disability because the prior disability involved a knee joint while the subsequent disability involved the peroneal nerve in lower leg, and finding that the disability caused by the injury to the peroneal nerve was considered to exist in the lower extremity as was the injury to the knee joint. [See Ch. 8, § 8.06[5][d].]

Permanent Disability; Apportionment; Substantial Evidence. The Appeals Board in *Pascale v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 1368 (writ denied) has held that the opinions of AMEs in rheumatology and psychiatry constituted substantial evidence to support a finding that 20 percent of the employee's permanent total disability, stemming from various cumulative orthopedic injuries, psychiatric injury, and fibromyalgia, was apportionable under Labor Code Section 4663 to pre-existing histrionic and hypochondriacal personality traits described by the psychiatric AME. [See Ch. 8, § 8.05[2][a].]

Permanent Disability; AMA Guides; Rebuttal Evidence. The Appeals Board in *Rosendin Electric, Inc. v. W.C.A.B.* (Bojorquez) (2008) 73 Cal. Comp. Cases 1123 (writ denied) has rescinded the WCJ's award of 27-percent permanent disability that was based on the testimony of two vocational experts regarding the employee's diminished future earning capacity, which the WCJ had found sufficient to

rebut a 13-percent rating obtained under the 2005 Permanent Disability Rating Schedule and the AMA Guides. [See Ch. 8, § 8.02[4][a].]

Discrimination; Labor Code Section 132a; Business Necessity. The Appeals Board in *Reliance Steel Co. v. W.C.A.B.* (Calzada) (2008) 73 Cal. Comp. Cases 409 (writ denied) has held that an employee with industrial injuries to his cervical spine, lumbar spine, and left leg in 2002, and to his right elbow in 2004, established that his employer terminated him in violation of Labor Code Section 132a, when the employee made a prima facie showing that he was discharged in January 2005 because of his industrial injuries, thereby shifting the burden to his employer to show that the discharge was necessitated by the realities of doing business on the ground that the employee was unable to do his job or that his job was no longer available, and the employer failed to make the required showing. [See Ch. 10, § 10.11[2][b].]

Petitions to Reopen; Stipulation to Coverage; Rescission. The Appeals Board in *Republic Indemnity Company of America v. W.C.A.B.* (Hunter) (2008) 73 Cal. Comp. Cases 414 (writ denied) has held that Labor Code Section 5804 did not limit the Board's power to reopen the WCJ's Findings and Award, in which the WCJ relied on the carrier's stipulation that it had coverage for an employee's head and psyche injuries. [See Ch. 31, § 31.04[2][a].]

Cumulative Trauma Injury; Date of Injury; Household Employees. The Appeals Board in *Gilbert v. W.C.A.B.* (Kanjo) (2008) 73 Cal. Comp. Cases 692 (writ denied) has held that Labor Code Section 5500.6 applied to determine liability as between multiple insurance carriers providing coverage to a single employer at the times of a household employee's specific

injury and cumulative injury and that application of Labor Code Section 5500.6 was not limited to cases in which there were multiple employers. [See Ch. 31, § 31.13[2][b].]

Injury/Death AOE/COE; Neutral Risk Doctrine. The Appeals Board in *Jetro Cash & Carry Holdings, Inc. v. W.C.A.B.* (Romero) (2008) 73 Cal. Comp. Cases 698 (writ denied) has held that, when an employee, by reason of his or her death, was unable to explain the circumstances of what happened at work, the “neutral risk” doctrine gave rise to a presumption that the death was work-connected, so that the widow and dependent minor children were entitled to death benefits and documented burial expenses when the husband/father was found dead in his employer’s locker room and the police report indicated that the investigating officers found that he had been murdered by gunshots. [See Ch. 9, § 9.01[1].]

Medical Treatment; Retroactive Application of SB 228 and SB 899. The Appeals Board in *Letherblaire v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 705 (writ denied) has held that the utilization review procedures in Labor Code Section 4610, enacted by SB 228, and the amendments to Labor Code Section 4600, contained in SB 899, were applicable to chiropractic treatment received by an employee pursuant to a 1998 award of further medical treatment issued in connection with her cumulative injuries through a period ending in 1997. [See Ch. 22, § 22.05[6][c][i].]

Medical Treatment; Medical Provider Networks. The Appeals Board in *Montes v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 709 (writ denied) has held that an employee with cumulative injuries to her bilateral upper extremities and psyche between 1993 and 2000 was required to transfer her

medical care to the carrier’s medical provider network. [See Ch. 5, § 5.05[13][c].]

Temporary Disability; Two-Year Limitation on Temporary Disability Payments. The Appeals Board in *Van Der Haeghen Construction Co. v. W.C.A.B.* (Din) (2008) 73 Cal. Comp. Cases 723 (writ denied) has held that an employee who sustained two admitted industrial back injuries, on March 17, 2004, and June 9, 2004, and had already received the maximum statutory amount of temporary total disability for the second injury, was also entitled to an award of temporary total disability for the first injury, since the first injury was not subject to the 104-week limitation because it occurred before the April 19, 2004, effective date of Labor Code Section 4656. [See Ch. 7, § 7.02[1].]

California Insurance Guarantee Association; Covered Claims; Other Insurance. The Appeals Board in *Caitac Garment Processing, Inc. v. W.C.A.B.* (Gutierrez) (2008) 73 Cal. Comp. Cases 882 (writ denied) has held that there was no preponderance of evidence that the special employer’s workers’ compensation insurance policy was not intended to cover special employees. [See Ch. 2, § 2.84[3][a].]

California Insurance Guarantee Association; Covered Claims; Other Insurance. The Appeals Board in *Fireman’s Fund Insurance Co. v. W.C.A.B.* (Giles) (2008) 73 Cal. Comp. Cases 1084 (writ denied) has held that the court of appeal’s decision in *General Casualty Insurance v. W.C.A.B.* (Miceli) did not collaterally estop CIGA from contending that a special employer’s insurance constituted “other insurance,” under Insurance Code Section 1063.1(c)(9), available to an injured employee. [See Ch. 2, § 2.84[3][a].]

Attorney’s Fees; Petitions to Termi-

nate Medical Treatment Awards. The Appeals Board in *Cherry v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 891 (writ denied) has held that the attorney for an employee with a wrist injury was not entitled to attorney's fees under Labor Code Section 4607, applicable in defending against an employer's petition to terminate prior medical treatment awards, since Labor Code Section 4607 did not apply to services related to the employee's petition to reopen for new and further disability. [See Ch. 20, § 20.02[2][h].]

Attorney's Fees; Commutation of Award. The Appeals Board in *Wilton Fire Protection District v. W.C.A.B. (Schneider)* (2008) 73 Cal. Comp. Cases 1380 (writ denied) has held that a 15-percent attorney's fee awarded to the attorney for an employee with 100-percent permanent disability was properly commuted equally from each of the employee's lifetime indemnity payments based on the published DEU life expectancy tables, not on the employee's actual life expectancy. [See Ch. 27, § 27.02[2].]

Cumulative Injury; Single Period of Cumulative Injury. The Appeals Board in *County of Los Angeles v. W.C.A.B. (Reynolds)* (2008) 73 Cal. Comp. Cases 898 (writ denied) has held that the agreed medical examiner's opinion that the employee's orthopedic condition was not permanent and stationary when the employee first left work, and that it worsened due to a cumulative trauma over the employee's two separate periods of employment, constituted substantial evidence to support a finding that the employee sustained one period of cumulative trauma, causing the employee's permanent total disability, rather than two separate periods as contended by the employer. [See Ch. 4, § 4.71.]

Serious and Willful Misconduct by

Employer; Increased Compensation; Entitlement of Non-Dependent Heirs.

The Appeals Board in *Cranston Steel Structures, Inc. v. W.C.A.B. (Tillery)* (2008) 73 Cal. Comp. Cases 680 (writ denied) has held that, pursuant to Labor Code Sections 4700, 4702, and 4706.5, non-dependent heirs were entitled to increased compensation for the employer's serious and willful misconduct. [See Ch. 9, §§ 9.01[2], 9.02[2].]

Serious and Willful Misconduct by Employer. The Appeals Board in *4 Point Pipeline Construction, Inc. v. W.C.A.B. (Flores)* (2008) 73 Cal. Comp. Cases 902 (writ denied) has held that an employee, who sustained injuries to his back, pelvis, collarbone, right upper extremity, right lower extremity, and urethra when he was crushed by a segment of a storm drain hit by a loader with faulty brakes while working in a construction site trench, met the burden of proving that his injuries were caused by his employer's serious and willful misconduct under Labor Code Sections 4553 and 4553.1. [See Ch. 10, § 10.01[4][a].]

Serious and Willful Misconduct by Employer. The Appeals Board in *Little Caesar Enterprises v. W.C.A.B. (Saldana)* (2008) 73 Cal. Comp. Cases 1102 (writ denied) has held that the employee met her burden of proving that the employer's serious and willful misconduct resulted in the employee's injury, when the Board found that the employee was injured while plugging or unplugging a machine into or from an electrical outlet, causing an electrical shock to her right upper extremity. [See Ch. 10, § 10.01[4][b].]

Presumption of Industrial Causation; Heart Trouble; Firefighters. The Appeals Board in *Garland v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 913 (writ denied) has

held that a firefighter's history of heart palpitations with objective medical findings of mitral valve prolapse and premature ventricular contractions did not constitute "heart trouble" for the purpose of applying the Labor Code Section 3212 presumption of industrial causation applicable to firefighters with heart trouble. [See Ch. 3, § 3.113[4][a].]

Legislative Authority; Administrative Procedure Act; Powers of Administrative Director. The Appeals Board in *Nevarez v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 932 (writ denied) has held that the legislature had the authority to enact a retroactive statute, Labor Code Section 4660(d), by enacting SB 899, which included instructions to the Administrative Director to issue a new permanent disability rating schedule, that the Administrative Director had the authority to make a rating schedule retroactive to dates of injury prior to the schedule's effective date, and that such actions by the Administrative Director did not violate the California Administrative Procedure Act. [See Ch. 1, § 1.12[6].]

Compromise and Release; Approval After Applicant's Death; Medicare Set-Aside. The Appeals Board in *Insurance Company of the State of Pennsylvania v. W.C.A.B.* (Rodriguez) (2008) 73 Cal. Comp. Cases 1089 (writ denied) has held that a compromise and release resolving an employee's claims for right knee and psyche injuries that was executed by all parties but approved after the employee's death was enforceable notwithstanding the fact that the Center for Medicare and Medicaid Services had not approved the Medicare set-aside amount contained in the compromise and release prior to its approval. [See Ch. 29, § 29.04[2][c].]

Compromise and Release Agreements. The Appeals Board in *Bejarano v.*

W.C.A.B. (2008) 73 Cal. Comp. Cases 1244 (writ denied) has held that there was no final agreement and no properly executed compromise and release agreement when the agreement was signed by the employee, her attorney, and one of the three involved insurers, after which one of the other insurers unilaterally attempted to modify the agreement by adding an addendum, which the employee never agreed to before dying. [See Ch. 29, § 29.03[6].]

Petitions to Reopen; New and Further Temporary Disability; Five-Year Statute of Limitations. The Appeals Board in *Kelly Staff Leasing, Inc. v. W.C.A.B.* (Druebert) (2008) 73 Cal. Comp. Cases 1097 (writ denied) has held that it had jurisdiction, more than five years after an employee's injury, to award retroactive temporary disability, when the employee's need for surgery arose within five years of her date of injury, her treating physicians recommended surgery within the five-year period, and the employee's petition to reopen for new and further temporary disability was filed within five years of her date of injury. [See Ch. 7, § 7.03[5]; Ch. 24, § 24.03[3][b].]

Psychiatric Injuries; Actual Events of Employment. The Appeals Board in *Merced City School District v. W.C.A.B.* (Delgado) (2008) 73 Cal. Comp. Cases 1115 (writ denied) has held that a teacher who alleged that she sustained psychiatric injury, resulting from her participation in school fund-raising activities, a subsequent grand jury investigation of those activities, press coverage of the grand jury investigation, and a defamatory e-mail sent to all school district employees by another teacher, met her burden under Labor Code Section 3208.3(b)(1) of demonstrating by a preponderance of the evidence that actual events of employment were predominant as to all causes of her psychiatric injuries.

[See Ch. 4, § 4.02[3][b].]

WCAB Powers; Exclusive Jurisdiction Over Workers' Compensation Claims.

The Appeals Board in *Venegas v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 1126 (writ denied) has ordered a WCJ to strike the phrase "Division of Workers' Compensation" from the title/heading of his decision and to substitute the phrase "Workers' Compensation Appeals Board." [See Ch. 1, § 1.11[6][a].]

Evidence; Newly Discovered Evidence.

The Appeals Board in *Scott v. W.C.A.B.* (2008) 73 Cal. Comp. Cases 1261 (writ denied) has ordered admission of surveillance videos, when the employer requested reopening of the record after trial but before submission of the matter, based on newly discovered evidence in the form of the videos, with the Board noting that the employer made substantial efforts to obtain a surveillance video of the employee before the mandatory settlement conference and trial, in the form of at least four attempts, but that the employee could not be seen at her residence on those occasions. [See Ch. 25, § 25.29[2]; Ch. 31, § 31.04[2][d].]

Employment Relationships; Employees. The Appeals Board in *Tri-Counties Regional Center v. W.C.A.B.* (Hope) (2008) 73 Cal. Comp. Cases 1266 (writ denied) has held that a physician was an employee at the time of her injury, despite the contract between the physician and her employer, which stated that the physician was an independent contractor. [See Ch. 3, § 3.06[2].]

Return to Work; Offers of Work; Notices. The Appeals Board in *City of Los Angeles v. W.C.A.B.* (Nguyen) (2008) 73 Cal. Comp. Cases 1348 (writ denied) has held that, when an employer sent a notice offering an injured employee regular work (form DWC-AD 10003), but should have

sent a notice offering modified work (form DWC-AD 10133.53), sending the incorrect form was not substantial compliance with the statute, so that the employer was ordered to pay a 15-percent increase in permanent disability payments pursuant to Labor Code Section 4658(d)(2). [See Ch. 7, § 7.02[3][d][vi].]

Reconsideration on WCAB's Own Motion.

The Appeals Board in *K-Mart v. W.C.A.B.* (Chism) (2008) 73 Cal. Comp. Cases 1362 (writ denied) has held that it had jurisdiction on February 25, 2008, to grant reconsideration on its own motion of the WCJ's January 31, 2008, order vacating a December 26, 2007, order approving compromise and release, even though the employee's January 18, 2008, petition for reconsideration/petition to set aside compromise and release was untimely filed. [See Ch. 24, § 24.12[2]; Ch. 28, § 28.01[3].]

FORMS

Optical Character Recognition (OCR) forms, discussed in Ch. 23, § 23.12.[2][c], and Ch. 25, § 25.06A[2], developed by DWC for mandatory use have been included in Appendix D. These are:

- § F2.01B Application for Adjudication of Claim
- § F2.04 Application for Subsequent Injuries Fund Benefits
- § F2.06A Answer to Application for Adjudication of Claim
- § F2.08 Document Cover Sheet
- § F2.09 Document Separator Sheet
- § F5.01 Stipulations With Request for Award
- § F5.02 Stipulations With Request for Award—Death Case
- § F6.01 Declaration of Readiness to Proceed

- § F6.01A Declaration of Readiness to Proceed to Expedited Hearing (Trial)
- § F6.06 Minutes of Hearing
- § F11.01 Employee's Disability Questionnaire
- § F11.02 Request for Summary Rating Determination of Qualified Medical Evaluator's Report
- § F11.03 Request for Summary Rating Determination of Primary Treating Physician Report
- § F11.04 Request for Consultative Rating
- § F11.05 Request for Reconsideration of Summary Rating by the Administrative Director
- § F12.01 Compromise and Release
- § F12.02 Compromise and Release—Dependency Claim
- § F12.03 Compromise and Release—Third Party Action
- § F12.06 Pre-Trial Conference Statement—Multiple Parties
- § F15.01 Notice and Request for Allowance of Lien
- § F17.01 Petition to Terminate Liability for Temporary Disability Indemnity
- § F23.02 Vocational Rehabilitation Plan
- § F23.03 Request for Dispute Resolution
- § F23.05 Notice of Termination of Vocational Rehabilitation Services
- § F23.09B Notice of Offer of Modified or Alternative Work for Injuries Occurring on or After 1/1/04
- § F23.09C Request for Dispute

Resolution Before Administrative Director

- § F23.09D Supplemental Job Displacement Nontransferable Training Voucher Form
- § F23.09E Notice of Offer of Regular Work
- § F23.11 Settlement of Prospective Vocational Rehabilitation Services

LexisNexis Workers' Compensation Law Center. An interactive site on the free web at:

<http://law.lexisnexis.com/practiceareas/Workers-Compensation>.

Your Community. Your Expertise. LexisNexis has taken the plunge and embraced Web 2.0 technology in a big way. The Workers' Compensation Law Center is an online interactive site on the free web that permits users to access content and interact with each other. Web 2.0 is also much more than a virtual water cooler. Web 2.0 lets the World Wide Web be responsive in real time to developments on the ground by providing the user with very current information. But the critical part—and this is key—is the user's ability to affect that information. Web 2.0 offers a unique opportunity not only to get your message out there, but to influence that message and maximize its impact. It's viral PR of the most amazing kind! So let your voice be heard by joining the community today. Registration is free. Post your comments on emerging issues and recent developments in the law. Participate in a discussion that will be heard around the country!

Free Content. Here's what you can access for free:

- *New Headlines:* top news stories of the day

- *Workers' Comp Law Blogs*: insider perspectives on key issues
- *Movers and Shakers*: news about law firms, workers' comp agencies, businesses and individuals
- *Podcasts*: recorded news and interviews
- *Webinars*: interactive educational programs
- *Content Download*: free articles if you're registered at our site
- *Web polling*: interactive polls about workers' comp issues
- *Larson Unplugged*: humorous songs about workers' comp

Free Delivery Options. Here's how to stay informed of changes at the LexisNexis Workers' Compensation Law Center:

- RSS feeds
- Email alerts

- Widget to iGoogle

Lexis.com Access. Our *lexis.com* subscribers can quickly link to the following features*:

- 50 States and D.C. workers' comp statutes, regulations, cases, and treatises
- 50 States and D.C. top workers' compensation cases
- Insights and Analysis: expert commentaries that can be purchased on *lexis.com*

** Lexis.com users will be charged an additional fee for any products not included in their online subscription.*

Questions? Comments? News Tips to Share? Contact Robin Kobayashi, the site coordinator, at her email address Robin.E.Kobayashi@lexisnexis.com or 1-800-424-0651 ext. 3352.

Matthew Bender provides continuing customer support for all its products:

- Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;
- Customer Service—missing pages, shipments, billing or other customer service matters (1-800-833-9844).
- Outside the United States and Canada, (518) 487-3000, or fax (518) 487-3584;
- Toll-free ordering (1-800-223-1940).



www.lexis.com

Copyright © 2009 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 00270, Release 69, April 2009

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

FILING INSTRUCTIONS

California Law of Employee Injuries and Workers' Compensation

Publication 270 Release 69

April 2009

Check
As
Done

- ☐ 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 68. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 68, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- ☐ 2. Separate this Release Number 69 package into the following groups of material:
 - Blue Special Alert
 - Pink Special Alert
 - White Revision pages
- ☐ Arrange these groups of material next to each other so that you can take material from each group as required and proceed with the filing of this release.
- ☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

**Check
As
Done**

*Remove Old
Pages Numbered*

*Insert New
Pages Numbered*

For faster and easier filing, all references are to right-hand pages only.

VOLUME 1

Revision

☐ Title page thru xxv Title page thru xxiii

Special Alert

☐ Blue Special Alert pages SPA-1 thru SPA-3 . Blue Special Alert page SPA-1

Revision

<input type="checkbox"/>	1-3 thru 1-5.	1-3 thru 1-5
<input type="checkbox"/>	1-19	1-19 thru 1-20.1
<input type="checkbox"/>	1-33 thru 1-47	1-33 thru 1-48.17
<input type="checkbox"/>	1-67 thru 1-75	1-67 thru 1-76.7
<input type="checkbox"/>	1-86.1 thru 1-87.	1-87 thru 1-88.1
<input type="checkbox"/>	2-9.	2-9
<input type="checkbox"/>	2-71	2-71
<input type="checkbox"/>	2-103.	2-103 thru 2-104.1
<input type="checkbox"/>	2-111 thru 2-125	2-111 thru 2-126.1
<input type="checkbox"/>	3-15 thru 3-16.1.	3-15 thru 3-16.1
<input type="checkbox"/>	3-33 thru 3-34.5.	3-33 thru 3-34.5
<input type="checkbox"/>	3-81 thru 3-85	3-81 thru 3-86.1
<input type="checkbox"/>	3-91	3-91 thru 3-92.1
<input type="checkbox"/>	3-105 thru 3-109	3-105 thru 3-109
<input type="checkbox"/>	3-124.7 thru 3-124.11	3-124.7 thru 3-124.11
<input type="checkbox"/>	4-23 thru 4-24.1.	4-23 thru 4-24.1
<input type="checkbox"/>	4-55 thru 4-56.1.	4-55 thru 4-56.1
<input type="checkbox"/>	4-109.	4-109
<input type="checkbox"/>	4-117.	4-117
<input type="checkbox"/>	5-13 thru 5-14.3.	5-13 thru 5-14.3
<input type="checkbox"/>	5-35	5-35
<input type="checkbox"/>	5-60.1 thru 5-61.	5-61 thru 5-62.1
<input type="checkbox"/>	7-1 thru 7-31	7-1 thru 7-32.11
<input type="checkbox"/>	8-7 thru 8-11	8-7 thru 8-12.1
<input type="checkbox"/>	8-17 thru 8-18.3.	8-17 thru 8-18.5
<input type="checkbox"/>	8-35 thru 8-44.11	8-35 thru 8-44.17
<input type="checkbox"/>	8-53 thru 8-54.7.	8-53 thru 8-54.8(1)
<input type="checkbox"/>	9-3 thru 9-13	9-3 thru 9-13
<input type="checkbox"/>	10-13 thru 10-15	10-13 thru 10-16.1
<input type="checkbox"/>	10-31 thru 10-35	10-31 thru 10-35
<input type="checkbox"/>	10-63 thru 10-67	10-63 thru 10-68.1
<input type="checkbox"/>	10-80.1 thru 10-80.11	10-80.1 thru 10-80.11
<input type="checkbox"/>	10-107	10-107 thru 10-108.1

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	10-147	10-147 thru 10-148.1
<input type="checkbox"/>	11-128.1 thru 11-128.5.	11-128.1 thru 11-128.5

VOLUME 2

Revision

<input type="checkbox"/>	Title page thru xi	Title page thru xi
<input type="checkbox"/>	20-5 thru 20-6.1.	20-5 thru 20-6.1
<input type="checkbox"/>	20-18.1 thru 20-19	20-19 thru 20-20.1
<input type="checkbox"/>	20-29.	20-29 thru 20-30.1
<input type="checkbox"/>	22-29.	22-29
<input type="checkbox"/>	22-37.	22-37
<input type="checkbox"/>	22-44.5.	22-44.5
<input type="checkbox"/>	22-51 thru 22-58.7	22-51 thru 22-58.23
<input type="checkbox"/>	22-67.	22-67 thru 22-68.1
<input type="checkbox"/>	23-1 thru 23-45	23-1 thru 23-55
<input type="checkbox"/>	24-5 thru 24-7	24-5 thru 24-7
<input type="checkbox"/>	24-21.	24-21
<input type="checkbox"/>	24-35 thru 24-38.7	24-35 thru 24-38.9
<input type="checkbox"/>	24-43 thru 24-49	24-43 thru 24-49
<input type="checkbox"/>	25-1 thru 25-3	25-1 thru 25-3
<input type="checkbox"/>	25-13 thru 25-31	25-13 thru 25-32.9
<input type="checkbox"/>	25-39 thru 25-48.3	25-39 thru 25-48.3
<input type="checkbox"/>	25-59.	25-59 thru 25-60.1
<input type="checkbox"/>	26-1	26-1
<input type="checkbox"/>	26-7 thru 26-11	26-7 thru 26-12.5
<input type="checkbox"/>	26-19 thru 26-28.1	26-19 thru 26-27
<input type="checkbox"/>	26-51 thru 26-55	26-51 thru 26-55
<input type="checkbox"/>	27-13 thru 27-14.1	27-13 thru 27-14.1
<input type="checkbox"/>	27-19 thru 27-20.1	27-19 thru 27-20.1
<input type="checkbox"/>	28-5	28-5 thru 28-6.1
<input type="checkbox"/>	28-24.1 thru 28-25	28-25 thru 28-26.1
<input type="checkbox"/>	28-38.1 thru 28-39	28-39
<input type="checkbox"/>	29-18.5 thru 29-21	29-19 thru 29-22.1
<input type="checkbox"/>	29-52.1 thru 29-52.3.	29-52.1
<input type="checkbox"/>	30-17 thru 30-21	30-17 thru 30-22.45
<input type="checkbox"/>	30-27 thru 30-33	30-27 thru 30-33
<input type="checkbox"/>	31-5	31-5 thru 31-6.1
<input type="checkbox"/>	31-11 thru 31-17	31-11 thru 31-18.1
<input type="checkbox"/>	31-23 thru 31-29	31-23 thru 31-30.3
<input type="checkbox"/>	31-38.3.	31-38.3
<input type="checkbox"/>	32-1	32-1
<input type="checkbox"/>	32-11 thru 32-16.1	32-11 thru 32-16.1
<input type="checkbox"/>	32-37 thru 32-38.1	32-37 thru 32-38.1
<input type="checkbox"/>	32-50.1 thru 32-51	32-51 thru 32-52.1

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	32-57 thru 32-63	32-57 thru 32-63
<input type="checkbox"/>	32-71 thru 32-72.13	32-71 thru 32-72.13
<input type="checkbox"/>	33-1 thru 33-12.1	33-1 thru 33-11
<input type="checkbox"/>	34-9 thru 34-19	34-9 thru 34-19
<input type="checkbox"/>	34-43 thru 34-45	34-43 thru 34-45

Special Alert

<input type="checkbox"/>	Pink Special Alert page SPA-1	Pink Special Alert page SPA-1
--------------------------	---	-------------------------------

Revision

<input type="checkbox"/>	35-1	35-1
<input type="checkbox"/>	35-19 thru 35-21	35-19 thru 35-22.3
<input type="checkbox"/>	35-27.	35-27
<input type="checkbox"/>	35-33.	35-33
<input type="checkbox"/>	35-48.1 thru 35-48.3.	35-48.1 thru 35-48.3
<input type="checkbox"/>	35-63.	35-63
<input type="checkbox"/>	35-71.	35-71
<input type="checkbox"/>	35-83.	35-83
<input type="checkbox"/>	35-91 thru 35-93	35-91 thru 35-93
<input type="checkbox"/>	35-101 thru 35-102.1	35-101 thru 35-102.1
<input type="checkbox"/>	35-115 thru 35-132.13.	35-115 thru 35-132.11
<input type="checkbox"/>	35-161 thru 35-165	35-161 thru 35-165

VOLUME 3

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	AppB-1 thru AppB-5	AppB-1 thru AppB-5
<input type="checkbox"/>	AppB-11 thru AppB-15	AppB-11 thru AppB-16.1
<input type="checkbox"/>	AppB-16.21 thru AppB-16.29	AppB-16.21 thru AppB-16.39
<input type="checkbox"/>	AppB-40.14(97).	AppB-40.14(97)
<input type="checkbox"/>	AppB-56.1 thru AppB-58.7	AppB-57
<input type="checkbox"/>	AppB-95 thru AppB-105.	AppB-95 thru AppB-106.3
<input type="checkbox"/>	AppB-113 thru AppB-117	AppB-113 thru AppB-118.1
<input type="checkbox"/>	AppB-120.11 thru AppB-136.3.	AppB-121 thru AppB-136.25
<input type="checkbox"/>	AppB-169 thru AppB-173	AppB-169 thru AppB-205
<input type="checkbox"/>	AppC-1 thru AppC-107	AppC-1 thru AppC-103
<input type="checkbox"/>	AppD-1 thru AppD-5	AppD-1 thru AppD-5
<input type="checkbox"/>	AppD-21	AppD-21 thru AppD-22.5
<input type="checkbox"/>	AppD-29 thru AppD-30.7	AppD-29 thru AppD-30.21
<input type="checkbox"/>	AppD-51 thru AppD-54.11.	AppD-51 thru AppD-54.21
<input type="checkbox"/>	AppD-61	AppD-61 thru AppD-62.1
<input type="checkbox"/>	AppD-94.17 thru AppD-110.1	AppD-95 thru AppD-110.2(53)
<input type="checkbox"/>	AppD-110.19	AppD-110.19 thru AppD-110.20(1)

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	AppD-120.1 thru AppD-120.3	AppD-120.1 thru AppD-120.3
<input type="checkbox"/>	AppD-167 thru AppD-179	AppD-167 thru AppD-180.3
<input type="checkbox"/>	AppD-187 thru AppD-189	AppD-187 thru AppD-190.3
<input type="checkbox"/>	AppD-206.3 thru AppD-219	AppD-207 thru AppD-245
<input type="checkbox"/>	TC-1 thru TC-107	TC-1 thru TC-109
<input type="checkbox"/>	TS-1 thru TS-59	TS-1 thru TS-63
<input type="checkbox"/>	I-1 thru I-107	I-1 thru I-107

FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printcdsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

- (1) the publication title;
- (2) specific volume, chapter and page numbers; and
- (3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printcdsc

Use the search tool provided to find and download missing filing instructions,
or sign on to the Print & CD Service Center to order missing pages or
replacement materials. Visit us soon to see what else
the Print & CD Service Center can do for you!



www.lexis.com

Copyright © 2009 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 270, Release 69, April 2009

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.