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California Law of Employee Injuries and Workers' Compensation

Publication 270

Release 90

September 2019

HIGHLIGHTS

Cases

- Recent developments have been added, including the *Wilson* en banc opinion and the *Villanueva* significant panel decision.

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of workers' compensation attorneys, judges, and claims professionals rely on this free eNewsletter published by LexisNexis. To subscribe, go to www.lexisnexis.com/wcnews and request the California eNewsletter.

CALIFORNIA CASES. The following cases have been added:

Published Cases

Injury AOE/COE; Preexisting Conditions; Apportionment. The court of appeal in *City of Petaluma v. W.C.A.B. (Lindh)* (2018) 29 Cal. App. 5th 1175, held that the QME, as required by SB 899, correctly distinguished between causation of injury, not permissible grounds for apportionment, and causation of disability, legally mandated grounds for apportionment, in apportioning employee's disability 85 percent to preexisting

vascular spasticity and 15 percent to industrial injury. [See ch. 8, § 8.06[1].]

Workers' Compensation Insurance; Arbitration. The court of appeal in *Jackpot Harvesting, Inc. v. Applied Underwriters, Inc.* (2019) 33 Cal. App. 5th 719, held that, because a "Request to Bind" contained a collateral arbitration agreement that materially changed the dispute resolution process between insured and insurer without approval pursuant to Insurance Code Section 11658 and associated regulations, the trial court did not err in voiding the arbitration agreement. [See ch. 2, § 2.02[1][a].]

Home Health Care; Stipulations; Utilization Review. The court of appeal in *Allied Signal Aerospace v. W.C.A.B. (Wiggs)* (2019) 35 Cal. App. 5th 1077, held that the Appeals Board had no jurisdiction to order development of the record to review the medical necessity and reasonableness of home health care when, pursuant to the parties' 2012 stipulation, a nurse's task was limited to a single assessment and report, and did not function to waive utilization review in subsequent years. [See ch. 5, § 5.02[2][d].]

Unpublished Case

Liens; Lien Activation Fees; Payment Deadline. The court of appeal, in an unpublished, and therefore uncitable, opinion in *State Compensation Insurance Fund v. W.C.A.B.* (2019) 84 Cal. Comp. Cases 273 (court of appeal opinion not published in official reports) held that the federal district court's order giving

lienholders until December 31, 2015, to pay lien activation fees contained no exception for liens with lien conferences scheduled before that date, and the lienholder's liens should not have been dismissed. [See ch. 30, § 30.20[1].]

WCAB en banc decision

Psychiatric Injury; Catastrophic Injury; Increased Impairment Rating. The Appeals Board en banc in *Wilson v. State of CA Cal. Fire* (2019) 84 Cal. Comp. Cases 393 (Appeals Board en banc opinion) held that determination of whether an injury is catastrophic under Labor Code Section 4660.1(c)(2)(B) focuses on the nature of the injury and is a fact-driven inquiry. [See ch. 4, § 4.02[3][a].]

WCAB significant panel decision

Medical Liens; Stayed Liens; "Controlled" Entities. The Appeals Board in *Villanueva v. Teva Foods* (2019) 84 Cal. Comp. Cases 198 (Appeals Board significant panel decision) clarified the definition of an entity "controlled" in Labor Code Section 139.21(a)(3) by "an individual if the individual is an officer or a director of the entity, or a shareholder with a 10 percent or greater interest in the entity." [See ch. 30, § 30.22[1].]

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.

California Insurance Guarantee Association; Covered and Excluded Claims; Lien Assignments. The Appeals Board in *California Insurance Guarantee Association v. VQ Ortho/Vision Quest Industries, Inc. (Mota)* (2018) 83 Cal. Comp. Cases 1905 (writ denied) held that a lien claim for medical treatment was a covered claim and was not barred by Insurance Code § 1063.1(c)(9) when the present lien claimant was the original lien claimant under Insurance Code § 1063.1(c)(9) despite a prior assignment of the lien to, and reassignment from, that assignee back to the original and present lien claimant. [See ch. 2, § 2.84[3][a].]

Doctrine of Laches; Burden of Proof. The Appeals Board in *Travelers Indemnity Co. of Connecticut v. W.C.A.B. (Robledo)* (2018) 84 Cal. Comp. Cases 29 (writ denied) held that the defendant insurer did not meet its burden of establishing laches to preclude liability, based on a five-and-one-half year delay in joining the special employer and its insurer as party defendants in the employee's case, when the insurer offered no evidence showing how delay in joinder prejudiced its defense to the employee's claim. [See ch. 24, § 24.03[1].]

Liens; Procedural Rights and Duties; Dismissal of Lien For Failure to Appear. The Appeals Board in *Well Tone Physical Therapy v. W.C.A.B. (Avina)* (2018) 84 Cal. Comp. Cases 32 (writ denied) held

that defective service of the WCJ's order dismissing a lien for the lien claimant's failure to appear at a lien conference did not render the order invalid, and, additionally, affirmed the WCJ's determination that there was no good cause to grant the lien claimant relief from dismissal of its lien, based on "excusable neglect" by the lien claimant in failing to calendar the hearing date. [See ch. 30, § 30.22[5][b].]

Permanent Disability; Rating; Combining Multiple Disabilities. The Appeals Board in *County of Alameda v. W.C.A.B. (Cortes)* (2019) 84 Cal. Comp. Cases 98 (writ denied) held that an employee who suffered a cumulative orthopedic injury to multiple body parts and a compensable consequence psychiatric injury, was 100 percent permanently disabled from her injuries, when the WCJ properly determined the extent of the employee's permanent disability by adding her ratable orthopedic impairments, then adding her psychiatric impairment to her orthopedic impairment, rather than by combining her impairments using the Combined Values Chart. [See ch. 32, § 32.03A[1].]

Permanent Disability; Apportionment; Preexisting Nonindustrial Condition. The Appeals Board in *County of Alameda v. W.C.A.B. (Cortes)* (2019) 84 Cal. Comp. Cases 98 (writ denied) held that the WCJ properly apportioned 20 percent of the employee's psychiatric permanent disability to nonindustrial causes and rejected the defendant employ-

er's assertion that 25 percent of the employee's permanent disability should have been apportioned based on the opinion of the psychiatric AME that five percent of her psychiatric disability (in addition to the 20 percent already apportioned) was caused by stress from her divorce, when the employee testified that, on the contrary, she was relieved by the divorce. [See ch. 32, § 32.03A[7].]

Liens; Filing and Service; Lien Declarations. The Appeals Board in *Athens Administrators v. W.C.A.B. (Perales)* (2019) 84 Cal. Comp. Cases 212 (writ denied) held that, although Labor Code Section 4903.8(e) provides that failure to comply with the lien declaration requirement will make post-January 1, 2013, liens invalid, there is no such provision applicable to liens filed before January 1, 2013. [See ch. 30, § 30.25[1].]

Permanent Disability; Rating; Permanent Total Disability. The Appeals Board in *International Capital Group v. W.C.A.B. (Walter)* (2019) 84 Cal. Comp. Cases 215 (writ denied) held that an employee, who sustained industrial orthopedic and psychiatric injuries in the form of headaches, suffered 100 percent permanent disability based on the reporting of a panel QME in psychiatry and on vocational expert evidence indicating that the employee could not compete in the open labor market due to her psychiatric condition and was not amenable to vocational rehabilitation. [See ch. 8, § 8.02[4][c][i], ch. 32, § 32.03A[6].]

Employment Relationships; Joint Employment. The Appeals Board in *Arena Football One v. W.C.A.B. (Gray)* (2019) 84 Cal. Comp. Cases 318 (writ denied) held that both the San Jose SaberCats and the Arena Football League jointly employed the professional football player employee. [See ch. 3, § 3.141[1].]

Attorney's Fees; Depositions; Laches. The Appeals Board in *Shandler & Associates v. W.C.A.B. (Arelano)* (2019) 84 Cal. Comp. Cases 325 (writ denied) held that the WCJ did not abuse his discretion in finding that the employee's attorney was not entitled to Labor Code Section 5710 fees beyond those already paid for depositions that occurred in 2001, and was likewise not entitled to an award of penalties or sanctions against the defendant. [See ch. 20 § 20.02[2][h].]

Stipulations; Setting Aside. The Appeals Board in *HomeGrocer.com v. W.C.A.B. (Dean)* (2019) 84 Cal. Comp. Cases 419 (writ denied) held that the employer did not show good cause to be released from the parties' stipulation regarding the employee's injured body parts, notwithstanding an opinion rendered by a QME after execution of the stipulation that the employee did not sustain industrial injury to various stipulated body parts. [See ch. 26, § 26.06[2].]

Permanent Disability; Rating; Combining Multiple Disabilities. The Appeals Board in *State Compensation Insurance Fund v. W.C.A.B. (Devereux)* (2019) 84 Cal. Comp.

Cases 423 (writ denied) held that the WCJ properly determined the extent of an employee's permanent disability by adding his ratable impairments from cognitive and cardiac/hypertension injuries, rather than combining them using the Combined Values Chart, despite the absence of medical evidence showing a synergistic effect between the impairments, when there was no overlap between the cognitive and the cardiac/hypertension impairments. [See ch. 8, § 8.02[4][a].]

Permanent Disability; Commencement of Payments; Cost of Living Adjustments. The Appeals

Board in *Vertis Communications v. W.C.A.B. (Garietz)* (2019) 84 Cal. Comp. Cases 427 (writ denied) held that the employer was obligated, for purposes of the employee's entitlement to cost of living adjustments under Labor Code Section 4659, to commence payment of permanent total disability indemnity on the date that the employee's orthopedic injury became permanent and stationary in 2006, notwithstanding that he did not become entitled to permanent total disability indemnity until his psychiatric injury reached maximum medical improvement in 2015. [See ch. 8, § 8.08[4].]

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