

# Law & Order



## It's The Law

### **Calif. 6<sup>th</sup> Latest to Rule that New PD Rating Schedule Applies (11/26/07)**

The California 6<sup>th</sup> Appellate District on Wednesday added to a string of decisions applying the 2005 Permanent Disability Rating Schedule (PDRS) instead of the more generous 1997 schedule for injuries that were not deemed permanent and stationary until after the new schedule went into effect.

In *Tanimura & Antle et al. v. Workers' Compensation Appeals Board and Avelino Lopez*, Lopez suffered a hand injury at work on Sept. 1, 2001. A medical examiner deemed that it was permanent and stationary as of Jan. 13, 2006.

In April 2004, while Lopez was undergoing treatment, Gov. Arnold Schwarzenegger signed into law Senate Bill 899, which directed the Division of Workers' Compensation to draft a new fee schedule and apply the schedule to all pending cases, with two exceptions. The DWC adopted the controversial new rating schedule on Jan. 1, 2005.

The Workers' Compensation Appeals Board (WCAB) ruled that Lopez qualified for the old schedule under one of the two exceptions, specifically that Lopez's employer was required to issue a Labor Code Section 4061 notice prior to the Jan. 1, 2005, effective date of the new rating schedule. The WCAB, in a divided ruling, reasoned that the duty under Section 4061 to notify an injured worker of his right to permanent disability benefits arises when the first payment commences.

The 6<sup>th</sup> District, as other appellate courts decided in previous rulings, said in an

unpublished decision that no duty of notice was required until after Lopez had exhausted temporary total disability benefits. In effect, the court decided that the Section 4061 duty arises after the last TTD payment, not the first.

“In sum, although Lopez’s injury occurred on Sept. 1, 2004, before the 2005 PDRS was adopted, the intent of Labor Code Section 4660, Subdivision (d), is to require some showing of permanent disability before Jan. 1, 2005, for the 2005 PDRS not to apply,” the justices wrote.

**Under the new rating schedule, Lopez will receive a rating of 9% and a payment of \$7,200, compared to a 30% rating and a \$29,150 award.**

## **In The News**

### **Approach of Paperless System Leaves Users Anxious, Excited, Panicked (11/26/07)**

With the Workers Compensation Appeals Board less than eight months (and counting) away from going paperless, the DWC announced that it would extend the public comment period for its proposed Electronic Adjudication Management System (EAMS) regulations through Nov. 28.

The decision to delay the rules comes not a moment too soon as attorneys and other users are getting a little nervous. Or anxious. Or excited. Or downright panicky.

Early last month, WCAB Administrator Kevin Star told a workers' comp labor-management panel that the paperless system is on schedule to go live by the middle of next year. In the meantime, attorneys and other eventual users of the paperless system will have a chance to see for themselves how it will work sometime in January, when the website will be available for preview; beta testing will begin the following month, according to the EAMS work schedule.

Until then, however, fear of the unknown appears to be taking its usual toll.

### **TTD Maximum to Increase Nearly 4% in 2008**

A law enacted in 2006 requires that the TTD rate move in relation to the state average weekly wage (SAWW) annually. The SAWW is defined as the average weekly wage paid to California employees covered by unemployment insurance as reported by the US Dept. of Labor for the 12 months ending 3/31 in the year preceding the injury.

Consequently, in 2008, the maximum TTD rate will increase to \$916.33/per week on 1/1/08. The minimum TTD rate will also climb to \$137.45 from \$132.25

## **Quote of the Day**

**You gotta love'm-only from the mouth of an applicant's attorney!**

**“We hereby demand a panel of 5 Albanian-speaking psychiatrists in the Alhambra area”.**