



BAKER v. WCAB (2011), 52 Cal.4th 434, 76 CCC 701

Provided by William Davis, Esq., Santa Rosa Office

The Supreme Court in *Baker v. WCAB* was asked to resolve a dispute over when Labor Code Section 4659(c) requires the parties to first apply a cost of living adjustment (COLA) to life pension or total permanent disability benefits.

The court was presented with three possible starting dates for applying a COLA to the benefit payment rate. One option, advocated by the Court of Appeal, was to apply the COLA starting on January 1, 2004, regardless of the date of injury. The second option, advocated by the applicant and the WCAB, was to apply the COLA starting on January 1 of the year following the date of injury, even if the applicant did not become entitled to permanent disability or life pension benefits until years later. The third option, advocated by the defense, was to apply the COLA on January 1 of the year after the applicant first became entitled to the benefit being adjusted.

The WCAB had previously determined the annual cost of living adjustment increases in total permanent disability payments to which an applicant was entitled. The Applicant contended that he was entitled to retroactive COLA's for the period from January 1 following the date of his industrial injury to the date on which his total permanent disability payments commenced. A worker's compensation administrative law judge ruled in his favor, and that decision was upheld on administrative appeal. The Court of Appeal, Sixth Dist., annulled the decision.

The Supreme Court reviewed the language of the statute and reversed the judgment of the Court of Appeal and remanded to that court for further proceedings. The court held that COLAs are to be calculated and applied prospectively commencing on the January 1 following the date on which the injured worker first becomes entitled to receive, and actually begins receiving, such benefit payments. The date of such entitlement is the permanent and stationary date in the case of total permanent disability benefits, and it is the date on which partial permanent disability benefits become exhausted in the case of life pension payments. Thus, the applicant could not obtain retroactive COLA's prior to his date of entitlement to benefits. It is important to note that, in a life pension case, the COLA is not applied to permanent disability benefits, but only to the life pension benefits after permanent disability benefits end and the life pension begins.