



**CAMPOS v. WCAB (EXPERT TREE SERVICE) (2010) (COURT OF APPEALS, NOT CERTIFIED FOR PUBLICATION), 38 CWCR 137, 2010 Cal. App. Unpub. LEXIS 4818, *Provided by Laura G. Simpson of the Van Nuys Office***

The Court of Appeals in an unpublished decision annulled a Board decision that had reversed a trial judge's holding that a tree climber/cutter sustained a psyche injury as a result of a sudden and extraordinary event when he was struck by a falling tree trunk. The Court of Appeals found no evidence to support the Board's analysis that the incident could not be considered unusual, unexpected, or extraordinary for a person in such an occupation. The WCAB had declined to characterize the event as extraordinary and held that the incident was one of the obvious hazards of the job. In doing so, the Board reversed the WCJ's decision that applicant sustained a compensable psychiatric injury and held that applicant's psychiatric injury was not a sudden and extraordinary event. Defendant contended that applicant's injury was barred under Labor Code Section 3208.3(d) because applicant had not met the threshold requirement of having been employed at least six months at the time of his injury.

Applicant was admittedly employed for less than six months as a tree climber/cutter when he sustained the injury to multiple body parts including a psyche injury. He sustained injury when the top of a large tree he was cutting fell on him and struck him in the chest. The saddle in which he was sitting twisted which caused him to hang by a cord for an extended period of time until he was finally able to get down from the tree. Applicant went in and out of consciousness as he was hanging from the tree, and testified that he thought that he was going to die. He testified that in his many years working as a tree climber/cutter he had never experienced an incident of this kind.

The WCAB agreed that the incident was sudden but not that it was extraordinary. It relied on the fact that applicant would routinely cut trees in his occupation, and the risk of this type of injury was not outside the ordinary risks of this occupation, no matter how infrequent or unusual. The WCAB relied in part on Wal-Mart Stores v. WCAB (Garcia), 112 Cal.App.4<sup>th</sup> 1435 (2003) (fn. 9) which affirmed that the six month bar applies to all psychiatric injuries as well as the court's statement in the footnote that sudden and extraordinary means catastrophic types of incidents such as explosions not accidents which occur in the course of performing one's occupation which may be inherently dangerous. The WCAB also refused to determine as a matter of law that a psychiatric injury which flows from a serious orthopedic injury is extraordinary.

**The Court of Appeals annulled the Board decision and found that there was no evidence to support the Board's analysis. The Court of Appeals noted that the record was sparse and contained few facts. The Court noted the Applicant's testimony that he had never seen this type of incident occur and he did not expect it to occur to him. The Court also noted that there was no evidence to support the Board's conclusion that this incident was one of the obvious hazards of the job.**

**The case was remanded to the Board for further consideration consistent with the Court of Appeals decision.**