



CANTRELL V. WOKERS' COMPENSATION APPEALS BOARD
(Wal-Mart Stores, Inc.) (2009) Court of Appeal, Fifth Appellate District,
74 Cal.Comp.Case 819; 2009 Cal. Wrk. Comp. LEXIS 200
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The Court of Appeal remanded a decision favorable to employers back to the WCAB for determination whether a policy requiring drug testing after an industrial injury constitutes discrimination under Labor Code section 132a. The applicant suffered an industrial knee injury on Thanksgiving. Wal-Mart has a mandatory drug testing for its employees under the following circumstances: “1) at initial hiring, 2) upon promotion into a salaried management or other safety sensitive position, 3) if involved in an accident or injury at work, and 4) if suspected of violating the policy.” The trial judge and the Appeals Board ruled in favor of the employer, Wal-Mart, finding that the applicant failed to meet his burden of proof regarding discrimination finding that the defendants’ witnesses were much more credible regarding the employee’s failure to appear at the store to have a drug test. However, the court of appeal annulled the Order Denying Reconsideration remanding the matter back to the WCAB to determine whether Wal-Mart’s drug testing policy discriminated against the injured worker and whether its conduct in implementing and applying the policy was necessary and directly linked to the realities of doing business. Based on this case, when implementing a drug testing policy, the prima facie showing of the applicant is solely to show that because of the industrial injury, the employer engaged in conduct detrimental to the worker. Once the worker makes this showing, the burden of proof shifts to the employer to demonstrate that its conduct was necessary and directly linked to the realities of doing business affirming the long-standing opinion founded in *Judson Steel Corp. v. Workers’ Compensation Appeals Board* (1978) 22 Cal.3d 658, 661; 43 Cal.Comp.Cases 1205.