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City of San Diego v WCAB
(2007) Fourth Appellate District
D049878; WCAB #SDO0275402

Applicant, a fire captain for the City of San Diego Fire Department, contracted Hepatitis C from workplace exposure to blood and bodily fluids. A Qualified Medical Examiner, Dr. Jay, reported in June of 2001 that the applicant's condition was permanent and stationary, but there were no ratable factors of disability under the schedule for rating permanent disability in effect at that time.

In April of 2004 SB 899 was enacted, pursuant to which a new permanent disability rating schedule (based on the AMA Guides) would be in effect for all injuries from and after January 1, 2005 and for injury claims prior to January 1, 2005 where there had been either no comprehensive medical-legal report or no report by the treating physician indicating the existence of permanent disability, or when the employer had not been required to provide the notice required by Section 4061. [Labor Code Section 4660 (d)].

In July of 2005, Dr. Jay issued a supplemental report, wherein he concluded that under the AMA Guides, applicant would have a 25% Whole Person Impairment as a result of the Hepatitis C. Applicant was awarded \$30,940.

The City of San Diego petitioned for reconsideration, which was denied by the WCAB. The 4th District Court of Appeal affirmed the decision of the WCAB, holding that Dr. Jay's 2001 report was indeed a "comprehensive medical-legal report," but there was no indication of the "existence of permanent disability." As the case was never resolved prior to the enactment of SB 899, the applicant was able to obtain a supplemental report addressing factors of disability under the new schedule, which would apply to this case given the lack of the requisite DWC notice and/or the medical report indicating the existence of permanent disability prior to January 1, 2005.