



New case Brief
Prepared by Stockton Office
Paula E. White, Esq.

May 25, 2007

COSTCO WHOLESALE CORPORATION v. WCAB (Chavez)
(2007) SFO 484264 [Court of Appeal A116145]

Applicant suffered an admitted injury on June 5, 2004. On September 24, 2004, applicant's medical/legal evaluator opined applicant was not permanent and stationary; the report did not comment upon whether applicant was expected to realize permanent disability. On October 2, 2004, temporary disability commenced. Applicant was deemed permanent and stationary on October 25, 2005.

Applicant argued the *1997 Permanent Disability Rating Schedule (PDRS)* was applicable based upon the following: 1) A comprehensive medical/legal report was in existence prior to January 1, 2005; 2) Applicant received temporary disability prior to January 1, 2005, thus triggering defendant's obligation to provide notice as to permanent disability as set forth in Labor Code Section 4061. Defendant argued the new PDRS applied based upon the following: 1) There was no medical/legal report or treating physician report indicating the existence of permanent disability prior to January 1, 2005; 2) Defendant's obligation to provide notice as to permanent disability occurs "together with the last payment of temporary disability indemnity."

Applicant prevailed both at the trial and WCAB level. The WCAB relied upon the reasoning in Baglione and Pendergrass (as issued prior to April 6, 2007) which sets forth the interpretation of Labor Code Section 4660(d) and 4061, respectively. The WCAB opined Labor Code Section 4660(d) does not require a comprehensive medical/legal report to reflect the existence of permanent disability, only the treating physician report. In addition, defendant's obligation to provide notice as to permanent disability occurs at the same time temporary disability commences. Accordingly, the *1997 PDRS* applies in determining applicant's level of permanent disability.

Defendant appealed, and review granted. The justices were not persuaded with the Board's application of the last antecedent rule as reflected in Baglione. Although the Court opined the last antecedent rule was "grammatically sound," such rules are to provide guidance in determining legislative intent. The lack of a comma is not indicative of legislative intent. As for Labor Code Section 4061, the court opined intent was clear. Defendant's obligation to provide notice as to permanent disability occurs "together with the last payment of temporary disability indemnity." The court noted the passage of SB 899 was emergency legislation to provide much needed relief. The WCAB interpretation renders that statute meaningless. Such interpretations are to be avoided. Relief granted to Petitioner Costco.