



New Case Briefs
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County of San Luis Obispo v. WCAB (Martinez)
(2005) Civ. No. B182145 [Court of Appeal – Unpublished Decision]

In an unpublished opinion, the Court of Appeal, Third District, ruled that an employer did not violate **LC 132a** when an injured worker, who was returned to work based upon a release to full duties by his treating physician, was terminated because of a later QME opinion that he could not return to his usual and customary job.

Applicant, Art Martinez, a mental health therapist, sustained an admitted injury from an assault by a violent patient. After back surgery, the surgeon, Dr. Kissel, recommended modification of Martinez' job so that he not be required to restrain patients to avoid injuring his back. In his later Permanent and Stationary report, Dr. Kissel changed his opinion, finding the injury did not preclude Martinez from physically restraining patients. Based upon the report, the County returned the applicant to his job. Applicant later selected Dr. Hutchinson as his QME, who issued a report that applicant should not be returned to a job with a potential for physical altercations. Applicant's designated treating chiropractor concurred.

Based upon the Applicant's QME report, the applicant was taken off work and Martinez filed a 132a Petition. At trial on the Petition, employer representatives testified that altercations with students, some of whom weighed in excess of 300 pounds, were daily in occurrence, could not be restrained by others and had frequently resulted injuries to therapists. The Workers Compensation Judge ruled the County violated 132a, awarded reinstatement, back pay and \$10,000 in penalties which was affirmed by the WCAB.

The Court of Appeal reversed the ruling holding that under the new judicial standard, Martinez failed to show he was singled out. Further, the County showed reasonable business necessity relying on Applicant's QME, and was not required to obtain another medical report. The Court indicated that the Applicant was terminated because of his work restrictions, not because he obtained a permanent disability rating.