



New Case Brief
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Cruz v. Mercedes-Benz of San Francisco, et al. (WCAB en banc)

Applicant sustained an admitted injury to his back on January 4, 2005. Applicant has not worked since his date of injury. Defendant paid temporary disability from January 6, 2005 to January 17, 2007. The Applicant underwent back surgery on January 9 and 10, 2006. Although the Applicant remained temporarily disabled, Defendant stopped paying temporary disability benefits on January 17, 2007 pursuant to Labor Code 4656(c)(1), as two years had passed since payment of temporary disability had commenced.

Applicant argued that the exception under 4656(c)(2) for an amputation would apply because Applicant's back surgery required removal of a portion of a disk and a bone graft, and that temporary disability should be extended beyond the two years.

Applicant prevailed after Expedited Hearing. The WCJ found that Applicant's surgeries did constitute an amputation, and Awarded Applicant continuing temporary disability beyond the two years. The WCJ opined that removal of a portion of Applicant's spine and bone from the hip meets the definition of amputation, relying on Webster's dictionary. In addition, the Applicant's injury was severe enough to correlate it to the other exceptions in section 4656(c)(2). Finally, the WCJ relied on the rule of liberal construction of the statute to interpret the statute to benefit the injured worker.

Defendant, represented by Karen Dutton of Mullen & Filippi's San Francisco Office, filed a Petition for Reconsideration and argued (1) The WCJ's definition of an amputation was overbroad; (2) Applicant's condition was not as severe as the enumerated exceptions; (3) the WCJ's interpretation is contrary to Legislature's intent as spinal surgery could have been included in the exceptions; and (3) even a liberal construction of the statute would not extend temporary disability benefits where they are not authorized. Applicant argued ambiguity of the statute and that the legislative intent was indiscernible, requiring use of the "liberal construction rule."

The WCAB, in its Opinion and Decision after Reconsideration, disagreed with the WCJ. It states that it would give words their commonsense and ordinary meaning. Specifically, it opined that the common meaning of the term "amputation" encompasses external projecting body parts, not internal parts, *even if they include bone*. In addition, because the statute does not list spinal surgery as an enumerated exception, whether it is a "serious" injury is of no consequence. The WCAB also dismissed the WCJ's reliance on the rule of liberal construction, and cited the established law that they will not extend temporary disability where they are not authorized. The WCAB held that Applicant's surgical removal of internal, non-projecting body parts did not constitute an amputation and that the Applicant is not entitled to additional temporary disability.