



**Vicente Gomez v. WCAB, BMN Building, Inc. et al**  
**F051135**  
**(November 11, 2006)**

**Court of Appeal of California, Fifth**  
**District.(unpublished)**

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The 5<sup>th</sup> District Court of Appeal, in Gomez v WCAB recently held that Labor Code Section 4656 does not authorize the commencement of temporary total disability more than 5 years following the original date of injury. In Gomez , despite the filing of a timely petition to reopen, there was no medical evidence of further disability prior to the running of the 5 years, and thus, opined the Court, the WCAB had no jurisdiction to award TTD.

According to the Court, in order to invoke the WCAB's continuing jurisdiction under Labor Code Section 5410, a timely petition must be filed *and* there must be evidence of new and further disability within the 5 years. It is not enough for an injured worker to merely file a timely petition and suggest that he *will have* new and further disability. Well said!

Unfortunately, the decision has not been certified for publication and therefore cannot be cited or relied upon by a Court, but it is instructive nonetheless.