



J.C. Penney v. WCAB (Edwards) (2009) California Court of Appeals, Third Appellate District, Published (C059760, ADJ3946436)

In this published opinion, the 3rd District Court of Appeal reversed the decision of the Workers' Compensation Appeals Board, which significantly limited an Employer's credit relating to an overpayment of Temporary Total Disability. Mullen & Filippi's own Gregory T. Jones was counsel of records for Petitioner and Defendant, J.C Penney Company and American Home Assurance, administered by AIU holdings.

This case involves an Applicant who received years of medical treatment, including surgery, following an industrial injury occurring July 23, 2003. Applicant's treating physician issued a report advising that he was "Temporarily totally disabled through June 2006" in a progress report/PR-2. The parties thereafter agreed to utilize an AME to address all issues.

The AME thereafter issued a report dated February 5, 2007, in which he opined that Applicant had reached Permanent and Stationary status 6 months post arthroscopic surgery, or on August 9, 2005. Defendants thereafter sought a credit for the entire period of TTD paid after this P&S date at a hearing on the issue.

The ALJ found that the record supported a Permanent and Stationary date of February 5, 2007, the date of the AME evaluation. The ALJ reasoned that it was contrary to the spirit of Labor Code section 4062 to permit a retrospective Permanent and Stationary date where there was evidence to support "ongoing temporary disability". A credit for a TTD overpayment was awarded to defendant for the period February 5, 2007 through March 14, 2007. (The date of the AME evaluation through the date of the receipt of the report).

Defendants sought Reconsideration and the WCAB affirmed the decision, in pertinent part. Thereafter, Defendants filed a Petition for Writ of Review, on the basis that as the AME report was the only evidence regarding the P&S date, and as such, the decision was not based on substantial evidence.

While the Court of Appeal agreed that section 4062 did not allow retrospective permanent and stationary determinations, they disagreed that the statute compelled extending the TTD period through the date of the AME report. On that issue, the court found, "The limitation under section 4062 is to contradict the unchallenged medical determination of the treating physician". The Court reasoned that, as the last Permanent and Stationary date provided by the treater prior to the AME report was "June 2006", that section 4062 could only permit an extension of the TTD period that far, not to the date of the AME evaluation.

The Applicant also argued on appeal that the Defendant was barred, based on estoppel principles outlined in the case, Maples v. WCAB, from claiming that the TTD period had properly ended prior to the receipt of the AME report. The court disagreed, and

distinguished the Maples case on the basis that it involved a P&S report of which the Employer was aware and improperly withheld.

As the Appeals court held that the ALJ erred in relying on section 4062, the case has been remanded to allow the WCAB to reconsider the issue of the claimed TTD Credit.

This case was been appealed by applicant's counsel to the State Supreme Court on 7/13/09.