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Jiminez v. Kings County (2008—Decision after recon) 36 CWCR 117

Summary for New Brief Page

In a Decision after reconsideration, the Board determined that an employee is entitled to LC § 4850 benefits based on their weekly salary on the date that temporary disability begins, not their salary on the date of injury.

Case Brief

In **Jiminez v. Kings County** (2008—Decision after recon) 36 CWCR 117, a probation officer was injured on June 5, 2007. His weekly salary on that date was \$1024.80. The injury did not cause any temporary disability until November 29, 2007, by which time the applicant had been demoted and his salary was \$865.20 per week.

The County contended applicant was entitled to L.C. § 4850 benefits based on the rate of pay when he became TD. Applicant contended he should receive the higher rate based on his salary on the date of injury. Following an expedited hearing, the WCJ found that the applicant was entitled to compensation at the rate of pay on the date of injury. The County Petitioned for Reconsideration.

The WCAB granted reconsideration. The opinion notes that L.C. § 4850 is designed to “replace, in the same amount, only the salary that the employee loses as a result of the disability”. Here, the applicant did not lose the salary he was being paid on the date of injury. Rather, the loss was the amount he would have received if he had continued working during the TD period.

Generally, this approach will work to the employee’s benefit since most employees receive pay raises rather than demotions.