



New Case Brief
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Kleeman v. WCAB
(2005) 127 Cal.App.4th 274, 70 CCC 133 [Court of Appeal]

New Labor Code §§4663 and 4664 apply to all pending cases prospectively from the date of enactment of the new law (4/19/04), regardless of the date of injury.

Since the enactment of SB 899, there is a continuing difference of opinion as to the reach of the new laws to claims already in the litigation phase. This includes the question of whether under Labor Code Section 4664, prior PD awards can be subtracted from current disability for claims with a date of injury prior to April 19, 2004, to reduce PD liability. As discussed below, retroactive application of the apportionment laws under SB 899 has been supported by the decision of the Court of Appeal, 2nd District, where the case was still pending at the time SB 899 became effective on April 19, 2004.

Kleeman claimed multiple injuries while working as a Special Agent for the California Department of Justice. One of those injuries was to applicant's right knee, sustained in 1999. After stipulation in 2000 that the 1999 injury caused no PD to applicant's knee, applicant filed a Petition to Reopen for New and Further Disability. However, Applicant had suffered a prior injury to his knee back in 1986, resulting in an Award of 16½% PD. Applicant's QME apportioned 40% of the current PD to the 1999 injury, and 60% to a subsequent injury in 2001. But no PD was apportioned to the old 1986 injury, based on the QME's opinion that applicant had physically rehabilitated following the 1986 injury.

Based on the above record, the case was heard in March 2004, and ordered submitted for decision by the WCJ. However, on April 28, 2004, shortly after the April 19, 2004 effective date of SB 899, the WCJ vacated the submission, ordering development of the record on the issue of apportionment under the newly enacted law. Applicant petitioned for removal, and the WCJ issued his Report on Removal, stating that the new laws on apportionment apply prospectively from the effective date of SB 899, regardless of the date of injury. The Commissioners denied removal, and applicant sought appellate review, which was granted.

In considering the application of the new laws, the Court of Appeal, 2nd District, acknowledged that the new laws on apportionment contained both procedural as well as substantive aspects, which could affect their retroactivity. However, the Court interpreted Labor Code Section 47 as unambiguously requiring prospective application of the provisions of the new law for all dates of injury, unless otherwise specified. Finding no exclusion within Sections 4663 and 4664 from such application under Section 47, the Court found that the new laws on apportionment generally applied back to cases pending on the date of enactment of SB 899. Considering the character of the WCJ's existing order to develop the record regarding apportionment, the Court noted that Section 47 provides that changes made by the new law are not good cause to reopen, rescind, alter, or amend any existing order, decision, or award. However, the instant order to develop the record was not the type of order contemplated by Section 47 in which appeal has already been exhausted. Finding that applicant's claim was still pending and not subject to a final judgment, application of the new apportionment laws under SB 899 was not precluded by Section 47. Thus, the case was remanded to the WCAB to apply the new apportionment laws.