



New Case Brief  
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**State of California Employment Development Department v. WCAB (Kral)**  
**(2005) 70 CCC 161 [Court of Appeal – Unpublished Decision]**

Labor Code §4663 and Labor Code §4664 apply to pending cases prospectively from the date of enactment of Senate Bill 899, regardless of date of injury. Note: This case is not citable as it will not be published in the official reports.

On 08/12/02, the WCJ issued Findings & Award finding applicant Kathryn Kral sustained industrial injuries to the hands, elbows, and internal systems including diabetes and awarding 58% permanent disability without apportionment. The State filed a Petition for Reconsideration, which was granted. The WCAB found the opinions of both QME's deficient regarding causation of the applicant's diabetes and remanded the case to the WCJ. Supplemental reports were obtained from applicant and defendant's QMEs and the matter resubmitted to the WCJ. On 04/19/04, the WCJ issued Findings & Award, finding industrial injury to the hands, elbows, psyche, and internal systems including diabetes and awarded 81% permanent disability. The judge found there was no persuasive evidence regarding apportionment.

The State filed a second Petition for Reconsideration alleging that applicant's QME was not substantial evidence for several reasons, including the failure to **apportion to obesity** and other non-industrial factors pursuant to Senate Bill 899 and new Labor Code §4663. The WCAB denied reconsideration, and the State filed a Petition for Writ of Review.

The Court of Appeals held that Labor Code §4663(b) and (c) specify requirements for reporting apportionment and noted the requirements were procedural not substantive changes. They held that the procedural changes under these subsections applied prospectively to future medical reports. The court acknowledged that the new legislation might consist of substantive as well as procedural changes. Specifically, the court agreed that Labor Code §4663(a) and Labor Code §4664, which provide that apportionment based on causation rather than disability, was a substantive change. However, for reasons set forth in Kleemann v. Workers' Compensation Appeals Board (2005) \_\_\_\_ Cal App. 4th \_\_\_\_ (decided

02/24/05), the Court concluded the new Labor Code §4663 and Labor Code §4664 applied in this case.

Finally, the court stated that because former Labor Code §4663 was repealed and new Labor Code §4663 and Labor Code §4664 became effective under Senate Bill 899 before reconsideration was decided, the WCAB was required to apply the new legislation. Thus, apportionment to causation must be addressed pursuant to Labor Code §4663 and Labor Code §4664.