



Apportionment

In City of Los Angeles v. WCAB and Alex Johnson (2009) 2nd Appellate District, Unpublished (B204479), the court concluded apportionment may be appropriate due to degenerative changes following a prior award and the filing of a Petition to Reopen.

The parties relied on an AME who, as required under SB 899, addressed apportionment under Labor Code sections 4663 and 4664. The medical records demonstrated significant changes between 2002 and 2006 for the applicant's knee injuries. In finding an increase in permanent disability, the AME opined 50% of the increase to the prior industrial injuries and 50% to degenerative disease, which resulted in part from weight and age.

The WCJ rejected any apportionment under both 4663 and 4664. After a denial of Reconsideration, a Writ of Review was filed with the Court of Appeals. In their decision the court remanded the case for further development on the apportionment issue. While the prior awards were not subject to the expanded apportionment of SB 899, the AME's opinion on the increased PD was insufficiently developed. The remand provided the defendant an opportunity to return to the AME and develop the post award apportionment issue. The WCJ would still have to determine whether or not the AME's opinion would meet the substantial evidence burden requirement.

The case demonstrates the importance of developing the record to support apportionment following a reopening under SB 899. Herein the medical record showed stark changes in the applicant's condition over a four year period of time, half of which the AME attributed to the non-industrial degenerative disease process. For the court there was not sufficient clarity between pre-award and post award degenerative changes and thus the remand to return to the AME. This decision affirms that once adjudicated, previous awards cannot be reopened and subject to the new apportionment rules. However, the reasoning supports that a WCJ needs to consider apportionment under SB 899 on the alleged increased in PD after a prior award.