



New Case Brief
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HSR INC. v. WCAB (Mariscal)
(2007) Sixth Appellate District
H030998; WCAB #SJO0250601
Not certified for publication.

Applicant sustained an admitted injury to his left leg on October 21, 2004. Applicant received total temporary disability from November 9, 2004 through January 10, 2005.

Primary treating physician, Stephen Genest, MD, issued a “check the box” letter dated December 22, 2004, “indicat[ing] the anticipated permanent disability below.” Thereafter, there appeared the following:

	“YES	NO
Will there be permanent disability?	/	
Are Work Restrictions Anticipated?	/	
Are Subjective Permanent Disability Factors Anticipated?	/	
Are Objective Permanent Disability Factors Anticipated?	/	
Is Loss of Pre-injury Work Capacity Anticipated?	/”	

The trial judge issued a Findings and Award under the 1997 PDRS based on the letter of Dr. Genest. In response to Defendant’s petition for reconsideration, the trial judge noted that Dr. Genest’s “‘check the box’ report, while not in compliance with all the requirements of 8 CCR §10606,” was substantial evidence of the existence of permanent disability prior to January 1, 2005. Adopting the trial judge’s position, the WCAB issued an order denying reconsideration.

Defendant, represented by Sara Angelini of Mullen & Filippi’s San Jose office, argued that the “check the box” letter was not a report of substantial evidence because the letter contained no reference to the facts of the case other than the applicant’s name and the date of injury. There was no medical history, no history of the injury or examination of applicant, no review of the medical records, no diagnosis, no discussion of permanent disability, and no basis for the conclusion the permanent disability was anticipated.

The Sixth District Court of Appeals annulled the WCAB’s opinion and order denying reconsideration. The Appeals Court found that Dr. Genest’s “check the box” report was not substantial evidence to apply the 1997 PDRS. The Appeals Court specifically noted the standards set forth by *Escobedo* and *Granado*, which indicated that in order to

constitute substantial evidence, a report must set forth the reasoning behind the physician's opinions and not just the conclusions. The Appeals Court also noted that in order to be substantial, evidence must be solid and credible; to be solid and credible, the evidence must comply with California Code of Regulations, title 8, section 10606. They found Dr. Genest's report "woefully inadequate" and remanded the case to the WCAB for further proceedings.