



New Case Brief
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Pasquotto v Hayward Lumber, 71 CCC _____, 3/1/06, WCAB en banc

Labor Code §4664(b) provides for a conclusive presumption that the permanent disability that existed at the time of a PRIOR AWARD continues to exist at the time of a subsequent industrial injury. That statute however does not indicate what effect a prior Compromise and Release might have, in that the Compromise and Release generally does not state the amount of permanent disability that exists. Labor Code §4663 provides an alternative basis for apportionment. Under that section, compensation is to be paid only for that portion of the disability that was the direct result of the injury.

The WCAB first dealt with the true legal issue presented to it (i.e., can a Compromise and Release be considered a prior award of permanent disability). The WCAB said it cannot be such an award. It then went further to state that evidence as to what permanent disability generated the compromise cannot be used under Labor Code §4664. The concurring opinion goes to say that even if the Compromise and Release recited a level of permanent disability, it would still not constitute an award of permanent disability. The opinion gives the many reasons for that result.

Although the case truly dealt only with Labor Code §4664 apportionment, the WCAB attempted to give guidance to the community by discussing apportionment under Labor Code §4663. In this discussion the WCAB stated the following:

- 1) The evidence underlying a prior compromise and release is admissible and relevant in determining apportionment under Labor Code §4663.
- 2) The concept of “medical rehabilitation”, which existed under the prior apportionment statutes still exists. Even with that concept still existing, the prior injury can still be one of the “other factors” to which permanent disability can be attributed under Labor Code §4663.