



New Case Brief
Prepared by [San Jose Office](#)
James M. Gentile, Esq.

June 16, 2005

Law Offices of Thomas L. Plumb v. WCAB (Bradley)
(2005) 70 CCC 783 [Court of Appeal – Unpublished Decision]

This matter concerns the standard for the imposition of monetary **sanctions** during discovery. The appellate court set forth the standard for imposing sanctions under Labor Code Section 5813, and Rule 10561. Notably, the opposing party has a right to be heard.

Applicant Bradley, a Greyhound employee, presented for deposition on July 7, 2004. Greyhound advised that a Greyhound supervisor would sit in on the deposition as an "employee representative". Applicant objected, as the supervisor was a potential witness and could also possibly intimidate Ms. Bradley.

Greyhound moved to compel, and requested sanctions. Bradley lost, but the order on the petition said nothing about the sanctions. Applicant then moved for removal to the WCAB. The WCJ vacated the order compelling the deposition, and a 9/23/04 conference was set. No evidence was received at the conference, but \$750 in sanctions were imposed on applicant. Applicant petitioned for reconsideration, particularly as sanctions were imposed with no opportunity to be heard.

Interestingly, the WCJ admitted in responding to the petition, that the facts were unknown as no evidence had been received. The WCAB denied the petition, but the Third District Court of Appeal reversed. The appellate court set forth the standard for imposing sanctions under Labor Code Section 5813, and Rule 10561. Notably, the opposing party has a right to be heard. In admitting there was no record in the case, the WCJ implied that he was in violation of Rule 10561, particularly as he had vacated the order to compel. With no evidence or justification to support the imposition of sanctions, the appellate court annulled the WCAB's order denying reconsideration, and remanded the matter to the WCAB to rule in a manner consistent with the views of the appellate court.