



**New Case Brief**  
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**February 24, 2005**

**Rawn v. WCAB**  
**(2005) 70 CCC 146 [Writ Denied – Unpublished Decision]**

Pursuant to Labor Code §5502(e)(3), evidence is admissible after the close of discovery only upon a showing it was unavailable or undiscoverable with the exercise of due diligence prior to the Mandatory Settlement Conference. Note: This case is not citable as it is not to be published in official records.

Applicant was employed by the City of Fowler as a Finance Director. On 01/04/98, applicant suffered a fatal heart attack at his home. Mr. Rawn's wife filed a claim for death benefits alleging job related stress on a cumulative trauma basis, caused Mr. Rawn's heart attack. Discovery was closed on three separate occasions. Discovery was initially reopened when the WCJ discovered the medical record was insufficient to determine if Rawn's injury was AOE/COE. Discovery was reopened a second time when an IME was appointed. Discovery was reopened a third time to obtain transcribed chart notes from Mr. Rawn's family physician for review by the IME. The IME concluded Mr. Rawn's employment was not a contributing factor to his death.

Trial was held on April 14, 2004. The WCJ admitted the family physician's undated letter into evidence but refused to admit a similar letter summarizing the chart on the basis the subsequent report was "untrustworthy hearsay" and did not fall into an exception to the hearsay rule. Further, the WCJ stated the report was obtained after discovery was closed and was untimely. The WCJ also excluded the family physician's deposition on the same basis.

The Board held that pursuant to Labor Code §5502(e)(3), evidence is admissible after the close of discovery only upon a showing it was unavailable or undiscoverable with the exercise of due diligence prior to the Mandatory Settlement Conference. In spite of three separate opportunities to obtain supplemental documentation or testimony, Mrs. Rawn failed to seek the discovery. As Mrs. Rawn had full knowledge of the family doctor treating her husband before his death, the court noted that Mrs. Rawn could have sought further medical evidence and deposition testimony while discovery was reopened. The Court held that

Mrs. Rawn failed to make the requisite showing and offered no convincing explanation as to why the family physician's report and deposition testimony was not obtained during the numerous discovery periods.