



New Case Brief
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SCOTT BOUGHNER v. COMP USA INC.; and ZURICH NORTH AMERICA
Case No. SFO 0491230

Applicant sustained a right knee injury on May 6, 2005 while employed as a sales associate. The WCJ issued a Findings and Award finding that the applicant had rebutted the presumptive validity of the 2005 PDRS. The WCJ relied on evidence presented by Applicant in the form of deposition testimony from two experts. This evidence demonstrated that the Administrative Director had not fully complied with Labor Code section 4660(b)(2) by failing to base the adjusted rating schedule on data from additional empirical studies.

Defendants filed a petition for reconsideration alleging that the WCJ erred in finding the Administrative Director's actions were arbitrary and capricious, and not following the precedent set in Costa v. Hardy Diagnostic (2006) 71 CCC 1797.

The Appeals Board, in an *en banc* decision, reversed the decision of the WCJ and found that the Applicant had not rebutted the presumptive validity of the 2005 PDRS. The Board stated that the party challenging a regulation has the burden of demonstrating its invalidity, and must demonstrate the regulation is arbitrary and capricious. An arbitrary and capricious quasi-legislative action is equivalent to one that is entirely lacking in evidentiary support, one that has no reasonable or rational basis. Moreover, when evaluating the validity of a regulation, the evidentiary record is limited to the rulemaking record; extra-record evidence should not be admitted.

The case was remanded to trial level for further proceedings consistent with the Board's determination.