



Smith v. WCAB; Amar v. WCAB (2009) California Supreme Court, 74 CCC ___, 37 CWCR 117, 46 C4th 272

In this notable decision, the California Supreme Court held that Labor Code section 4607 does not authorize the Workers' Compensation Appeals Board to award attorney fees in cases where there has been a successful challenge to a denial of specific medical treatment by an employer, following an open medical award.

Each of the underlying cases (which were consolidated following appeal for Supreme Court review) involved an Applicant with a prior Stipulated Award for medical treatment. Following an initial denial, and related dispute as to the reasonableness and necessity of such treatment (specifically, an epidural injection in *Smith*; a weight loss program in *Amar*) each was authorized. In both cases, applicants' attorney requested an award of attorneys fees pursuant to section 4607, at an hourly rate, to enforce the existing medical awards.

The request for fees was denied at the trial level and by the Board in both cases. Subsequently, the Court of Appeal reversed, prompting defendants to seek review by the Supreme Court.

In a unanimous decision, the Supreme Court held that the plain language of section 4607 unambiguously provides for an award of attorney fees in cases where a party institutes proceedings to terminate an award. Section 4607, the Court concluded, is not extended to include cases where there has been a denial of a particular treatment request, rather than a challenge to all future medical care.

Based on the Court's opinion, it logically follows that in order for an applicant's attorney to recover fees under section 4607, the defendant must first file an unsuccessful petition to terminate the entire medical award. This case should immediately limit increasingly common petitions for attorneys fees filed in the last few years by applicant attorneys seeking compensation (at an hourly rate, no less) to litigate the ongoing treatment of their clients, following a Stipulated Award. Perhaps, it will provide some additional incentive to the parties to more carefully consider a Compromise and Release at the time of settlement.