



New Case Brief
Prepared by San Francisco Office
Janet M. Dancey, Esq.

August 14, 2006

Raquel Torres vs. SDM Precision Products, State Compensation Insurance Fund

This case provides further clarification of LC § 4660(d) regarding when the AMA Guidelines apply. According to this three-member panel decision, the mere existence of a comprehensive medical-legal report is sufficient to place an applicant's permanent disability rating under the old schedule. Furthermore, an AOE/COE report is a comprehensive medical-legal report.

The panel applied the "last antecedent rule" to reach the conclusion that the qualifying phrase "indicating the existence of permanent disability" only applies to the words immediately preceding, namely "a report by a treating physician".

Thus, according to this panel (which is not binding precedent) the AMA Guidelines will apply to injuries prior to 1/1/05 if: 1) there is no comprehensive medical-legal report (including an AOE/COE report); or 2) there is no report by treating physician indicating the existence of permanent disability or 3) the employer is not required to provide LC § 4061 notice to the injured worker.

Basis for Appeal of Torres v SCIF
Prepared by Salinas office,
William R. Olson, Esq.

The Decision on Reconsideration in Torres v SCIF interpreted Labor Code §4660 to disallow application of the new rating schedule based on grammatical statutory construction. Based on the 'last antecedent rule' the qualifying phrase "indicating the existence of permanent disability" was held to not apply to the antecedent phrase "comprehensive medical-legal report" for lack of a separating comma. Based on close attention to grammatical content, this statutory construction would appear fair enough.

However, there is a more obvious basis for construction of the statute to obtain an opposite conclusion. Labor Code §4660(d) provides, in relevant part, that:

“For compensable claims arising before January 1, 2005, the schedule as revised pursuant to changes made in legislation enacted during the 2003-04 Regular and Extraordinary Sessions shall apply to the determination of permanent disabilities when there has been *either* no comprehensive

medical-legal report *or* no report by a treating physician indicating the existence of permanent disability, *or* when the employer is not required to provide the notice required by Section 4061 to the injured worker.” (emphasis added)

The statute provides circumstances under which the new schedule will be applied to pre-1/1/05 DOIs: where there has been no comprehensive report, where the treating physician has not reported the existence of permanent disability, or where the reporting requirements of L.C. §4061 have not been triggered. As such, the absence of any one of the three prescribed circumstances will require application of the new rating schedule.

Had the intent of the new statute been to require the absence of each of the conditions, the drafters of the statute could easily have deployed the conjunctive “and” in place of the disjunctive “or” to more narrowly restrict application of the new rating schedule. It is submitted that it cannot be presumed that the drafters of the new law failed to appreciate the difference between the effect of their selection of the word “or” rather than “and”.

Thus, based on simple statutory construction, the holding in *Torres* that “it is sufficient that ‘there has been’ a ‘comprehensive medical-legal report’ for any reason” is insufficient alone to anchor this claim in the old 1997 rating schedule. Application of the new rating schedule is required where there is “no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker.” (L.C. §4660(d))

For the above reasons, the WCAB’s Opinion And Order Granting Reconsideration should be overturned on Appeal, and the matter should be remanded to determine whether any of the three statutorily defined conditions exist, such that the new rating schedule applies.