



New Case Brief
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Vera v. Sapper Const. Co., et al

In the case of *Vera* (WorkCompCentral.com), a slim 2 to 1 panel decision authored by Commissioner Cuneo and co-signed by both Commissioners Miller and Rabine (who dissented) holds that the new schedule applies to all dates of injury unless there is substantial evidence to support the existence of permanent disability prior to 01/01/2005.

In doing so, the Panel rejected two reports requested by applicant's attorneys in which Dr. Auerbach concluded that there was the "existence of permanent disability," even though the applicant was "not permanent and stationary at this time," and in fact, had surgery after that time and was not found P&S until Dr. Auerbach's report of 02/23/2005, noting that "a disability cannot be both temporary and permanent at the same time."

This is a well-reasoned case, in contrast to another recent decision by a San Francisco trial judge, which came to the opposite conclusion. But the fact that the *Vera* decision was a split, and the existence of the other case (*Aldi v. Carr, et. al., (01/12/2006)*), mean the issue is far from decided. Anticipate appeals, but *Vera* seems much better reasoned and hopefully will remain good law.

See Daniel Vera v. Sapper Construction Company, Board Panel Decision 12/21/05 which held that a medical report that indicated the existence of PD in 2004 was internally inconsistent with a later report written by the same doctor who then indicated that the applicant was not P&S until 2005. Since internally inconsistent reports are not admissible evidence, there was no medical report meeting the requirements of LC 4660(d) and therefore the new AMA rating was applied lowering the applicant's PD from 59% to 26%.