



New Case Brief
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WARD v. CITY OF DESERT HOT SPRINGS
(2006) 71 CCC xxxx [Panel Decision]

The applicant, Kathy Ward, claimed injury to her psyche from June 8, 2000 to June 8, 2005. Defendant denied liability for the claimed injury and arranged for the applicant to be examined by a defense doctor pursuant to Labor Code §4064(d) contending that amendments to Labor Code §4060 by S.B. 899 did not eliminate the right of defendant to obtain at its own expense an admissible medical report.

On the advice of counsel, applicant refused to attend the scheduled examination. Defendant took the issue to the WCAB. After trial the WCALJ issued the a Findings and Order that stated in part 1) applicant sustained an injury AOE/COE and 2) medical reports regarding compensability of applicant's injury must be obtained through the procedures established by Labor Code §§4060 and 4062.2. Therefore defendant is not entitled to obtain a medical report of applicant pursuant to Labor Code §4064(d).

Defendant filed a Petition for Reconsideration and in the alternative a Petition for Removal. A panel of commissioners issued an Opinion and Decision after Reconsideration and an Order Denying Removal. The Panel decided that Labor Code §4060 as amended by S.B. 899 applies to "disputes over the compensability of any injury." Furthermore, "a medical evaluation to determine the compensability *shall be obtained only by the procedure provided in Labor Code §4062.2.*" In turn, Labor Code §4062.2 as adopted by S.B. 899 provided that an injury or claimed injury occurring on or after January 1, 2005 and if the employee is represented by an attorney, "*the evaluation shall be obtained only as provided in this section.*" Accordingly, because the above sections contain mandatory and limiting language, "only and shall," and were enacted after Labor Code §4064(d) the Legislature clearly intended that the procedure in Labor Code §§4060 and 4062.2 to be the exclusive method of obtaining medical evaluations on compensability.