



NEW CASE BRIEF
Prepared by the San Jose Office
Harry A. Oberhelman III, Esq.

JOSEPH BAGLIONE V HERTZ CAR SALES AND AIG, et al.
(WCAB No. SJO 0251644, 72 CAL. COMP. CASES)
EN BANC DECISION, 4/6/2007)

This case was first decided at the Appeals Board in an *en banc* decision on 1/24/2007. The 4-3 vote held that L.C. Section 4660(d), did not require a prior comprehensive medical-legal report to indicate “the existence of permanent disability” in order to trigger the application of the “old” permanent disability schedule. As with the Pendergrass *en banc* decision, the defendant was newly aggrieved when the trial judge’s ruling was overturned by the Appeals Board in Baglione I. Defendants filed their own Petition for Reconsideration, as they were entitled. In the interim, the term of Commissioner Rabine, who voted in the majority, expired and his replacement appointment, Commissioner Moresi, was the swing-vote to form a new majority.

The majority vote in Baglione II held that the phrase “existence of permanent disability” in L.C. 4660(d) required both a report from a treating physician **and** a comprehensive medical-legal report. The so called “antecedent rule”-- a rule of grammar that applies modifiers only to the words or clause nearest in the sentence -- was discounted by the majority as defeating Legislative intent. The Appeals Board reasoned that the Legislature intended SB 899 to take effect “at the earliest possible time”. The Majority pointed to one of the plethora of statutory construction rules to support its determination that the order of the words in Section 4660 (d) should not obstruct the intent of SB 899.

This *en banc* decision must now be followed by all WCJ’s until and unless an Appellate Court accepts the case for hearing and reverses the holding.